SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. ~~1331~~ 70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, *et al.*,

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE TENTH CIRCUIT

PARKER M. NIELSON
320 Kearns Building
Salt Lake City, Utah 84101
Attorney for Petitioners

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner Affiliated Ute Citizens of the State of Utah, ("*AUC*" herein) Plaintiff-Appellant in the courts below, and petitioners Anita Reyos, et al., ("*Reyos*" herein) Plaintiffs-Appellees in the courts below, pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit in these consolidated cases.

OPINIONS BELOW

The orders of the United States District Court for the District of Utah, dismissing the complaint in *AUC* and entering judgment for the plaintiffs in *Reyos*, are unreported. See App.[1] A, 1 to 98. The opinions of the Court of Appeals for the Tenth Circuit were simultaneously issued and are reported at 431 F. 2d 1337 and 1349, respectively, (10th Cir. June 19, 1970). See App. B, 99 to 121 and App. C, 122 to 125.

JURISDICTION

The decisions of the Court of Appeals were filed on June 19, 1970. Motions for rehearing in each case were duly filed and denied on November 12, 1970. The jurisdiction of this Court is invoked under the provisions of Title 28 U.S.C. Section 1254(1). The time for filing this petition expires February 10, 1971.

QUESTIONS PRESENTED

Under an Indian termination act, declaring a phased withdrawal of Government services rendered to Indians and an end to supervision of their restricted property:

1. Are the Indians deprived, by implication, of any interest in their property, or do they lose their cultural identity as American Indians so that benefits of law other than under Federal statutes are eliminated by implication?

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[1] "App." refers to the separately bound Appendix to this Petition.

2. May the BIA administratively eliminate protections to the Indian contained in an act of Congress or modify the termination procedures prescribed therein?

3. Does publication of a "termination proclamation" eliminate the Government's duty to Indians with respect to their property which is still under trusteeship or as to which the Government retains limited supervisory control?

4. Does a non-Indian purchasing or aiding in the purchase of stock in an Indian corporation have a duty to comply with the anti-fraud provisions of the Federal securities laws, in addition to the provisions of Indian law?

STATUTES AND REGULATIONS INVOLVED

The Ute Termination Act ("Act" herein) is published at 25 U.S.C. §§ 677-677aa, and is reproduced in its entirety at App. D, 126-143. The pertinent regulations under the Act are reproduced at App. E, 144-146.

The relevant provisions of the Securities Exchange Act of 1934 are reproduced at App. F, 147-148 and include Section 10(b) (15 U.S.C. § 78j(b)) and the "anti-fraud" provisions of Rule 10b-5 adopted thereunder (17 C.F.R. 240.10b-5).

STATEMENT OF THE CASE

The elements of this case are unusually complex, because of the interrelationship of two different sets of federal laws and regulations with a complicated termination program, and with a subtle fraud and conspiracy practiced on the Indians by whites, according to the findings of the trial judge. Statement of such a case is possible only by generalizing on the facts and an accurate presentation must await briefing on the merits. Nevertheless, we submit that the ultimate issues necessary to understand the case are as follows.

Petitioner *AUC* is an unincorporated association of all terminated Ute Indians formed by the Secretary of Interior pursuant to § 677e[1a] of the Act. The *Reyos* petitioners are individual terminated Utes who are members of AUC.

The Act provided that the Utes who were subject to its provisions, comprising 27.16186 per cent of the Ute Indian Tribe ("Tribe" herein) would be terminated from Federal supervision and be given their rights in severalty to all tribal property. The mineral estate in the reservation, which was difficult to divide, was to be held in common among the terminated Utes and those Utes who were not terminated. Supervision by the Bureau of Indian Affairs ("BIA" herein) of the Indian and his property was removed upon publication of a termination proclamation on August 26, 1961, except as to the mineral estate[2] which remained subject to certain restrictions on sale until August 27, 1964, and was subject to joint management under the Act by the "authorized representative" of the terminated Utes and the Tribe as representative of the Utes who were not terminated. The joint management restriction remains in effect to the present time, and title to the mineral estate remains in trust with the United States for the Indians beneficially entitled to it.

The "authorized representative" of the terminated Utes was to be selected by "an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood[3] members of the tribe at a special

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[1a] For convenience, references to the Act are merely by section number, as they appear in App. D.

[2] Real property was also subject to a "right of first refusal" which continued until August 27, 1964, but real property other than the mineral estate is not at issue herein.

[3] "Mixed-blood" is the term selected by Congress to designate the Indians who were subject to the Act. They are referred to herein as "terminated Utes."

election authorized and called by the Secretary."[4] The Secretary caused petitioner AUC to be formed in the manner stipulated by that provision and it was the undisputed "authorized representative" for a period of several years. Later, at a time contemporaneous with the publication of the termination proclamation, the BIA caused the Ute Distribution Corporation to be formed ("UDC" herein). UDC was not formed pursuant to a "constitution and bylaws" or at an election held in accordance with the Act. Nevertheless, the BIA thereafter permitted UDC to act in the capacity of "authorized representative" and paid all proceeds from the leasing of the mineral estate to UDC to be paid to its stockholders in the form of dividends. The stockholders quickly became non-Indians because of fraudulent stock purchases, all of which took place after August 26, 1961, and most prior to August 27, 1964. These sales are the subject of *Reyos*.

The substitution of a corporate charter for the constitution and bylaws prescribed by the Act injected a new element into Congress' termination program; for the corporate stock was subject to sale, but membership in the unincorporated association, like a person's citizenship, clearly was not. BIA undertook to supervise all sales of the stock prior to August 27, 1964, by adopting regulations incorporating substantially the same conditions on such a sale as were imposed by the Act on the sale of real property, and establishing respondent First Security Bank ("bank" herein) as transfer agent and to assist UDC as "business agent."[5] The bank found the regulations thus adopted to be inconvenient, however, and proposed an alternate procedure which was easier for it to administer.[6] The Superintendent of the Indian agency was informed of the changed procedure adopted by the bank, and he acquiesced in the changes, although they were never made a part of the regulations.

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[4] 25 U.S.C. §677e, reproduced at App. D, 128.
[5] See App. A, 8-9 for pertinent terms of the agreement.
[6] See App. A, 56, 68-69.

The terminated Utes, whom the trial judge found were naive and uninformed as to the nature of their stock,[7] sold it to non-Indians. The officers of the bank located non-Indian purchasers and Indian sellers of the stock and performed other tasks similar to those of a regular stock broker in the securities market.[8] The Indians were induced to sell in an assortment of ways which usually involved economic pressures,[9] sometimes contrived and sometimes already existent, and other deceptive practices which the trial judge found amounted to fraud. Agents were sometimes used by the bank officers in arranging for the purchases and applying the economic pressures. The Indian was usually given a used automobile or other chattel at inflated prices, even though the regulations required that the sale be for cash, and the Indian was usually required to sign an affidavit falsely reciting that the required amount of cash had been paid. Material facts concerning the transaction and information calculated to protect the Indian were withheld from him or misrepresented.

The *Reyos* plaintiffs claim that the sales of UDC stock were fraudulent within the meaning of the securities laws, and that the United States was negligent in failing to prevent the fraud by requiring compliance with the Act and regulations.[10] *AUC* seeks to confirm the title of its members in the mineral estate and its own right to act as "authorized representative."

The trial judge entered judgment for the *Reyos* plaintiffs but dismissed the *AUC* complaint, ruling that jurisdiction was

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[7] See App. A, 83. The stock contained red letter warnings calculated to alert the Indian to the probable value of the stock, but the Indian never saw the warnings because the bank kept the certificates in its vaults and refused the Indian access to them, even if he requested it. See App. A, 6-7, where the warning is quoted and App. A, 51, 56-57, 72-74.

[8] See App. A, 77-78.

[9] See App. A, 16.

[10] See App. A, 59-61 for findings that the government knew of the irregularities.

lacking. The Court of Appeals reversed in *Reyos*, and affirmed as to *AUC*.

REASONS FOR GRANTING THE WRIT

The decisions of the Court of Appeals present important questions of National policy touching the lives of the entire Indian population of this country. Many thousands of Indians have already been terminated, and the remaining Indians will undoubtedly be subjected to termination laws or other programs designed to eliminate or modify their status as protected wards.

The decisions herein alter the entire fabric of Indian law, rejecting the customary requirement of straight dealing by one who purchases Indian property [11] and declaring the terminated Indian "fair game" for unscrupulous white merchants. This Court has never had occasion to rule on the question of whether such an abrupt change of policy is required by the termination acts or is either desirable or proper, and should do so now to supply a guide to the courts in disposing of similar questions which are bound to arise in the future.

I

THE CASE PRESENTS IMPORTANT PUBLIC QUESTIONS CONCERNING THE POWER OF BIA TO ALTER A TERMINATION PROGRAM PRESCRIBED BY CONGRESS

The sales of the terminated Utes interest in the reservation could not have occurred if the BIA had not altered, or per-

[11] *E.g. Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964) *affirmed, per curiam* 368 F. 2d 1010 (9th Cir. 1966): "as Justice Holmes once said, people must turn square corners when they deal with their government. They must do the same when dealing with their government's wards."

mitted the alteration, of the termination procedure prescribed by Congress. If AUC is correct in its claim that a corporation such as UDC cannot act as "authorized representative," the sales could not have occurred because the mineral assets could never have been entrusted to the corporation. But even accepting, *arguendo*, that the use of the corporation was proper, the stock sales still could not have occurred if the altered procedures adopted by the bank had not been acquiesced in by the Superintendent. That is so whether one accepts the conclusion of the trial judge that the sales were the result of fraud, or the conclusion of the Court of Appeals that they were the result of contributory negligence or *pari delicto*,[12] for not a single transfer was accomplished in the manner contemplated by the Secretary's regulations.[13]

UDC was substituted for AUC as the "authorized representative" of the terminated Utes, although the Act clearly prescribed a "constitution and bylaws" rather than a corporate charter. A procedure for the sale of the corporate stock which suited the convenience of the bank was substituted for the one prescribed in the Act and regulations.

BIA may have felt that the procedures substituted were more desirable, but the law prior to this case has been as indicated in *Ballinger v. Frost*, 216 U.S. 240, 249 (1910):

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[12] The Court of Appeals apparently adopted the theory of *in pari delicto*:

> "The plaintiffs here thus complain that these affidavits which they executed were not accurate, and that the bank and its officials were aware that they were not correct.
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> • • •
>
> "It is difficult to see how they can complain of inaccuracies in their own affidavits." App. B, 112-114.

The Indians plainly did not complain of inaccuracies in their affidavits: they complained of the deviation from the procedure prescribed by Congress, which was the source of their injury. See App. A, 84. Thus, the true issue was not even considered.

[13] See App. A, 73-74, 82, for the trial judge's findings in this regard.

> "Whenever, in pursuance of the legislation of Congress, rights [of an Indian] have become vested it becomes the duty of the courts to see that those rights are not disturbed by any action of an executive officer, even the Secretary of Interior, the head of a department. However laudable may be the motives of the Secretary, he, as all others, is bound by the provisions of Congressional legislation."

AUC claims that the terminated Utes acquired vested rights in all assets, including the mineral estate, by virtue of §677o of the Act.[14] The Court of Appeals acknowledged that AUC and its members "has an undivided 27 per cent beneficial interest in the oil, gas and minerals"[15] but any comfort to the terminated Utes in that recognition was rendered illusory by the holding that the federal courts are without jurisdiction to confirm the interest of AUC or to prevent the delivery of these assets to the corporation which had fallen into non-Indian hands. AUC claimed that jurisdiction was available under 25 U.S.C. §345,[16] but the Court of Appeals took a restrictive view which prevents application of the section's jurisdictional provisions to any Congressional grants other than conventional allotments. In fact, the Court of Appeals avoided the central issue of the AUC case by asserting that "[i]t is not an issue in this case as to what organization . . . has the right

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[14] See discussion at page 20, *infra*.

[15] App. C, 125.

[16] In pertinent part, the section reads:

> "All persons who are in whole or in part of Indian blood or descent . . . who claim to have been unlawfully denied or excluded from . . . any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States. . . ."

The Court of Appeals' restrictive view of the section conflicts with the liberal interpretation in *United States v. Pierce*, 235 F. 2d 885, 888 (9th Cir. 1956). See also, *Hy-Yu-Tse-Mil-Kin v. Smith*, 194 U.S. 401 (1904); *Halbert v. United States*, 283 U.S. 753 (1930); *Arenas v. United States*, 322 U.S. 419 (1944).

of management." That was, indeed, the gravaman of the complaint.[17]

This Court should grant certiorari to reaffirm the time-honored concept that an administrative official cannot alter the procedures prescribed by Congress for the protection of Indians, and apply it to the recent wave of termination laws. The rule in the *Ballinger* case should be affirmed in the context of the termination laws for, as the Court of Appeals for the Ninth Circuit has said:

> "In his dealings with the Indians, the Secretary of Interior does not have the power of an asiatic potenate or even of a benevolent despot. He, like his wards themselves, is subject to legislative restrictions." *United States v. Arenas*, 158 F. 2d 730, 747-8 (9th Cir. 1947) *cert. den.* 331 U.S. 842.

II

THE WRIT SHOULD BE GRANTED TO SECURE PROTECTIONS TO THE INDIVIDUAL INDIAN CONTAINED IN THE ACT

A fundamental issue, of great significance to all American Indians, is whether the protections prescribed by a termination act for "members of the tribe" extend to individual Indians.

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[17] The complaint alleged:

> "Plaintiff is now and at all times since its creation, has been, the 'authorized representatives' of the 'mixed-bloods,' within the language, meaning and intent of Public Law 83-671 and whenever in said Law 'authorized representatives' is mentioned, said language refers to, and only to, the plaintiff herein. Plaintiff is now and at all times since its creation has been the exclusive representative of the 490 'mixed-blood' Ute Indians who constitute its only members. This action is brought by plaintiff for and on behalf of its 490 'mixed-blood' Ute Indian members."

The trial judge in *Reyos* carefully considered the records of meetings with the Indians preliminary to adoption of the Act, legislative history, the construction of the term "members of the tribe" by the Solicitor of the Department of Interior and the practices of BIA in implementing the Act. Based upon the extensive evidence available to him, the trial judge concluded that the protections of the Act for "members of the tribe" were available to the individual terminated Utes. Liability of the United States was based upon its negligence in securing those protections.

The Court of Appeals rejected the trial court's findings of Government negligence[18] by holding that "[t]he right of refusal thus created no duty on the part of the government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock."[19] Thus, this petition presents the important question of whether the procedures contained in legislation terminating the status of a protected Indian have any effect to protect the Indian himself in his property rights.

This Court suggested otherwise in *Menominee Tribe v. United States*, 391 U.S. 404 (1968), where the issue was whether a termination act protected the Indian's *treaty* rights:

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[18] In summary, as regards the government, the trial judge ruled that the Termination Act required a phased withdrawal of the government's supervision of the Indians over a ten-year period; that the restrictions on the sale of assets during the ten-year period were a limited protection to the Indians; that the government had a duty towards the Indians to exercise due care respecting the limited protective provisions; that, to the extent that it initiated programs during the ten-year period continuing beyond the period, its duty might also extend beyond the ten-year period; that there was a limited duty with respect to property remaining in the Government's control; that, without regard for the duty imposed by the Termination Act, the Government's conduct gave rise to duties under the "assumed duty" concept; and that the government negligently discharged its statutory and assumed duties by simply refusing to protect the Indians against fraudulent circumvention of the provisions of the Act which were well known to BIA officials.

[19] App. B, 108.

> "We decline to construe the Termination Act as a bank handed way of abrogating the hunting and fishing rights of these Indians. While the power to abrogate those rights exists 'the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress.'" (citations omitted) 391 U.S. 412-13.

The same principle should be extended to the statutory rights under this Act, which the Court of Appeals failed to secure to the Indians.

In the view of the Court of Appeals, the "right of refusal" which Congress directed be available to the "members of the tribe" was but a backhanded way of expropriating the terminated Utes' share of the mineral estate to the Utes who were not terminated and who were represented by the Tribe. The Court of Appeals refused to consider the evidence[20] on the proper construction of the term and relied, instead, upon the following holding of *Ute Indian Tribe v. Probst*, 428 F. 2d 491, 496 (10th Cir. 1970) *cert. denied* 27 L. Ed. 186:

> "The first-refusal provision gave the Tribe, for a ten year period, the opportunity to recover land which it had lost by division of assets between the two groups."

Rejection of the evidence by the Court of Appeals in favor of its own recently announced opinion would have been logical and understandable, had the Court of Appeals not refused AUC's earlier request to intervene *amicus curiae* in *Probst* to advise the Court of the legislative history which was not available to it in the *Probst* record. Nevertheless, both the Act and

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[20] These matters, which were not really issues until the Court of Appeals rejected the trial judge's findings, were emphasized in the Petitions for Rehearing, which were denied, and the Petition for Rehearing *en Banc* in *Reyos*, which was submitted for filing within the time permitted by the rules but disposed of with the court's comment: "received but not filed."

the regulations show on their face that the Court of Appeals' conclusion is wrong.[21]

The rationale of the Court of Appeals in *Probst* was rejected by Justice Cardozo many years ago, in *Shoshone Tribe v. United States*, 299 U.S. 476, 492-4 (1937):

> "The claimant takes the ground that the jurisdictional act is an exercise of the power of eminent domain . . . The sovereign power is not exercised to extinguish titles or other interests against the will of tribal occupants by force of eminent domain.
>
> ". . . Congress had no thought . . . to prescribe present expropriation in lieu of present reparation."

The Court of Appeals decision strikes at the basic policy of Indian law *against* an inference of elimination of protections available to Indians. The Court of Appeals concluded that when Congress imposed restrictions on the sale of Indian property in the form of a "right of refusal" exercisable by the "members of the tribe" (emphasis added), it really meant to extend the first refusal provision to the "Tribe" (emphasis added), and not its individual members. It was no matter, to the Court of Appeals, that the individual Indians were assured prior to the Act that these protections would extend to them as individuals, for the Court of Appeals simply ignored the findings of fact of the trial judge and the evidence on this point,[22] without any comment on the large volume of evidence sup-

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[21] The "right of refusal" could not be for the purpose indicated in *Probst*, for Congress contemplated that the Tribe would shortly be done away with in a subsequent termination of the full-blood group. See §§ 677 and 677w, App. D, 126 and 142, respectively. The regulations, contrary to the conclusion of the Court of Appeals, included the terminated Utes in the "members of the tribe" by definition. See 25 C.F.R. §243.2(c), App. E, 144: " 'Member of the Tribe' means all mixed-blood and full-blood members . . ."

[22] See App. A, 64.

porting the trial judge's findings.[23]

The proclivity of Indians to improvident dissipation of their assets is well known, presumably to Congress as well as the public. Congress plainly declared that the Secretary should "protect the rights of the tribe who are . . . non compos mentis, or in need of assistance in conducting their affairs,"[24] but the Superintendent read the term "in need of assistance" out of the Act entirely and did nothing pursuant to the mandate except as to those he determined to be "incompetent." The Court of Appeals ruled that he had no duty so to do. The requirement of an "offer to members of the tribe in such form as may be approved by the Secretary" for a ten-year period[25] did not impose upon the Secretary a duty to reject sales not in the required form, as a protection to the Indian, according to the Court of Appeals.

In response, we echo this court's comment in *Arenas v. United States*, 322 U.S. 419, 427 (1944): If the Indians were not to be afforded protections under the Act, and those protections were to be available only to the Tribe, why send government agents to the reservation to hold out that promise? Why the elaborate system of notice, to the individual members, of each proposed sale and of the first refusal option? Why the specific provisions concerning terminated Utes "in need of assistance" if Congress had no intention to protect them?

Can the rights of the individual Indian be cast aside so summarily? Congress plainly required an offer to "members

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[23] In doing so, the Court of Appeals rejected the firmly established principle that findings of the trial judge, including rulings of law, are entitled to great weight because of his peculiar opportunity to hear the evidence. *E.g. United States v. Oregon State Medical Society*, 343 U.S. 326 (1951).

[24] § 667u, App. D, 141-142.

[25] § 677n, App. D, 138.

of the tribe" and not the "Tribe." Moreover, Congress defined "member of the tribe" so as to include the terminated Ute plaintiffs in this case. Yet, the Court of Appeals denied these plaintiffs any rights under the procedures Congress prescribed.

III

THE COURTS SHOULD BE SUPPLIED WITH GUIDANCE CONCERNING THE EFFECT OF TERMINATION LAWS IN ELIMINATING PROTECTIONS TO INDIAN PROPERTY

The assumption of the Court of Appeals that, upon publication of the termination proclamation, the Indians subject to the Act were no longer entitled to the protection of their property under provisions of the Act itself or under the body of judicial precedent concerning commercial transactions with Indians is a question of National importance which merits the attention of this Court. No language of the Act requires such a result, and it is a firmly established doctrine that elimination of the protective provisions of Indian law may not be lightly inferred.[26]

The Court of Appeals pointed to the provisions of the Act declaring that upon publication of the termination proclamation "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable" and that "the laws of the several states shall apply to such member in the same manner as they apply to other citizens," and concluded that the Indians were stripped of their Indian status for *all* purposes when the termination proclamation was published. Further, the Court of Appeals read that language

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[26] See *Menominee Tribe v. United States*, 388 F. 2d 998, 1003 (Ct. Cl. 1967) Aff'd 391 U.S. 404, and cases collected there. See also *Chippewa Indians v. United States*, 307 U.S. 1 (1939); *Board of Commissioners v. Seber*, 318 U.S. 705 (1943); *United States v. Waller*, 243 U.S. 452, 459-460 (1916); *United States v. Bowling*, 256 U.S. 484 (1921); *Shoshone Indian Tribe v. Seaton*, 248 F. 2d 154 (D.C. Cir. 1957).

as meaning that the United States owed no further duty to protect that portion of the Indian's property which was still under its trusteeship.

The Court of Appeals extended the words of the statute beyond their natural meaning, however, and ignored other provisions of the Act. It is one thing to say that in matters such as probate law, Federal *statutes* dealing with Indians will no longer apply and that state statutes will be applied in their place, but quite another thing to say that the entire body of case law, based upon decisions of this Court dealing with presumptions of the law concerning those whose business acumen is known to be limited, was repealed. It is one thing to say that the United States will have no further duty to supervise property distributed to the Indian, but quite another to say that the United States may deliver the proceeds of the mineral estate to non-Indians with impunity, when it knows that the non-Indian's claimed interest was acquired in violation of the Act and the regulations.

A. *Conflicts With the Court of Appeals for the Ninth Circuit and The Court of Claims*

The Court of Appeals has construed the Act inconsistent with the construction of companion legislation by the Court of Appeals for the Ninth Circuit in *Crain v. First National Bank*, 324 F. 2d 532 (9th Cir. 1963) ("*Crain*" herein) and the Court of Claims in *Menominee Tribe v. United States*, 388 F. 2d 998 (Ct. Cl. 1967) *affirmed*, 391 U.S. 404 ("*Menominee*" herein). Both cases involved construction of termination acts which were companion legislation to the Ute Act, containing substantially identical provisions defining "members of the tribe" and directing a phased withdrawal of federal supervision, all enacted by Congress during the same month. The inconsistency lies in the Court of Appeals' holdings (1) that the publication of the "termination proclamation" ended, for

all purposes, the terminated Ute's status as Indians and as "members of the tribe," (2) that the Termination Act did not create an intermediate, or limited, trust relationship which continued until August 27, 1964[27] and (3) that the United States does not have a limited duty with respect to property retained in its possession.

The *Menominee* case dealt with whether the terminated Indians were "members of the tribe" after publication of the termination proclamation. The Court of Claims held that they were, and this Court affirmed the holding.

> "The government has challenged the jurisdiction of this Court, and contends that the Menominee Termination Act, supra, abolished the Menominee Tribe of Indians and that the plaintiffs are not entitled to maintain this suit in this court. We do not agree. [Many examples of continued tribal relationship are then given, all of which apply to the terminated Utes.] The Termination Act did not abolish the *tribe* or its membership. It merely terminated Federal supervision over and responsibility for the property and members of the tribe." 388 F. 2d 1000

The Court of Appeals held that the terminated Utes were no longer either "members of the tribe" or Indians. The effect was to deprive them of protective provisions of the Act itself, as already demonstrated; but perhaps more importantly, they were also deprived of the burdens and presumptions the law imposes on one who obtains Indian property by sharp dealings.[28]

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[27] See App. B, 108-110. The trial judge's conclusion that there was a limited relationship, giving rise to a limited duty on the part of the United States, was rejected. See App. A, 91-92.

[28] *E.g., Podfpybitty v. Skelly Oil Co.*, 390 U.S. 365, 369 (1968); *Heckman v. United States*, 224 U.S. 413, 446-447 (1911); *United States v. Trinidad Coal and Coking Co.*, 137 U.S. 160 (1890). See also *Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964) *affirmed, per*

The *Crain* case dealt with the closely related question of whether any vestige of the Government's supervisory control survived publication of the termination proclamation. The Klamath Indians who were the plaintiffs in *Crain* said that it did not, and that they had the right to dissolve a trust created by the Secretary. Their argument was premised on the exact assumption of the Court of Appeals in *Reyos*, that "once federal jurisdiction terminated on August 13, 1961, by Proclamation of the Secretary of the Interior, the guardian-ward relationship ended for all purposes and the appellants rights to handle their property must be determined as any other persons." [29] The Court of Appeals for the Ninth Circuit categorically rejected the argument:

> "Our answer is direct and simple. Federal jurisdiction did not end on August 13, 1961 and the *guardianship relation has not terminated for all purposes.*
>
> "Congress has the power to determine when, how and by what steps it will emancipate the Indian and whether the emancipation shall be complete or only partial." 324 F. 2d 532, 536 (emphasis added).

Thus, the square holding of the *Crain* case is that if the Secretary sets procedures in motion *prior* to publication of the termination proclamation, by which limited control is maintained over Indian property, as to that property "the guardianship relation has not terminated for all purposes." However, when the trial judge applied the narrow holding of *Crain* to the facts of the *Reyos* case, and held that as to the mineral estate which was still in the Government's hands and the notice

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curiam, 368 F. 2d 1010 (9th Cir. 1966) (Judge Chambers concurring separately):

> "wherever a sale of property has been made by an Indian during the trust period the courts have not hesitated to strike it down as void. Even if fair consideration has been given for the property the sale will not be allowed to stand; nor need the Indian first return the consideration."

[29] *Crain v. First National Bank*, 324 F.2d 532, 535-536 (9th Cir. 1963).

procedures which it instituted prior to publication of the proclamation there remained a vestige of power and correlative duty, he was reversed. Oddly enough, the holding of the Court of Appeals in *Reyos* is the very argument raised by the Klamaths in *Crain* and rejected by the Court of Appeals for the Ninth Circuit:

> "The provisions are clear and the termination was accomplished and is final." App. B, 109.

The confusion is further magnified if the *AUC* opinion and *Ute Indian Tribe v. Probst*, 428 F. 2d 491 (10th Cir. 1970) *cert. den.* 27 L. Ed. 186 are set along side the conflict between *Menominee* and *Crain*, on the one hand, and *Reyos*, on the other. Though decided by the same court, *AUC* and *Probst* conflict with one another. *AUC* adopted the *Menominee-Crain* rationale, and declared that the terminated Utes were still "members of the tribe":

> "The plaintiff . . . mixed-bloods . . . were formerly *or may be now* members of the Ute Indian Tribe." (emphasis added) App. C, 123.

However, *Probst* construed the term "members of the tribe" as meaning "Tribe," and "only secondarily, if at all, the protection of the selling mixed-blood," and *Reyos* merely adopted the *Probst* holding.

Reyos and *AUC* thus reach diametrically opposite conclusions on whether the terminated Utes are "members of the tribe," even though they were rendered by the same panel of the same court on the same day. In candor, we are dismayed that the Court of Appeals would take such an inconsistent approach on what is the pivotal issue in both cases.

The structure of the Act proves the construction in *Crain* and *Menominee* to be proper, and the construction in *Reyos*

and *Probst* to be in error. The Act must be read in its entirety, and in light of its purpose. The language of §677v which the Court of Appeals relied on is plainly qualified by an exception contained in §677o:

> "[the Secretary] shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, *except*[30] *as to his remaining interest in tribal property* in the form of [the mineral estate] all of which shall remain subject to the terms of sections 677-677aa of this title, *notwithstanding anything contained in said sections to the contrary.*" (emphasis added)

The limited duty found by the trial judge was based on the exception of §677o. The Menominee and Klamath termination acts did not contain such an exception, but the Court of Claims and the Court of Appeals for the Ninth Circuit had no difficulty in finding a limited tribal relationship and a limited supervisory control, after publication of the proclamation, based upon the general purpose of the legislation. Surely the Court of Appeals in *Reyos* is in error to reject the correlative duty in face of the clear exception contained in §677o.

B. *Conflicts With Decisions of This Court*

This Court has construed a termination act but one time. See *Menominee Tribe v. United States*, 391 U.S. 404 (1967).

[30] The exception relates to the antecedent thought: *viz.*, the Secretary shall remove the restrictions and supervision of property, except as to the mineral assets, which shall remain subject to the Act. The Government argued that the exception relates to the direction to convey the property. The issue was never decided, but even under the Government's construction there had to be a limited duty, for if there was any property which Congress did not direct be conveyed to the terminated Utes, there clearly would be a limited aspect of trusteeship remaining as to that property.

As regards the narrow holding of the *Reyos* case – that the provisions of the Act declaring that laws of the states will apply to terminated Indians in the same manner as they apply to other citizens means that after August 26, 1961, the United States had no vestige of a duty and the terminated Utes were stripped completely of their Indian status – this Court reached a diametrically opposite conclusion as regards the Menominee's treaty rights:

> "The Termination Act provided that after the transfer by the Secretary of title to the property of the tribe, all federal supervision was to end and 'the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.'
>
> "It is therefore argued with force that the Termination Act of 1954, which became fully effective in 1961, submitted the hunting and fishing rights of the Indians to state regulation and control. We reach, however, the opposite conclusion." 391 U.S. 410.

The conclusion was based on a reading of Public Law 280,[31] dealing with preservation of Indian hunting and fishing rights, as being *in pari materia* with the termination act. The same reasoning applies here, but with even greater force because of the exception contained in §677o of the Ute Act.

The degree to which the Court of Appeals decision in *Reyos* conflicts with this Court's *Menominee* decision is evident when it is observed that the Court of Appeals cited *both* the *Menominee* case and *Klamath and Modoc Tribes v. Maison*, 338 F. 2d 620 (9th Cir. 1964) for its conclusion that no vestige of a duty survived the publication of the termination proclamation. Yet the *Klamath-Modoc* case relied, in turn, upon the decision of the *Menominee* cases in the state courts where it was held that treaty rights were eliminated by the termination act,[32] and it was those cases which this Court

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[31] 67 Stat. 588, as amended, 18 U.S.C. §1162.

[32] *State v. Sanapaw*, 21 Wis. 2d 377, 124 N.W. 2d 41 (1963).

reversed.[33] Thus, the Court of Appeals has stood this Court's *Menominee* opinion on its head, and reads it as standing for the very proposition it was issued to correct.

The essential vice of the Court of Appeals conclusion is that by stripping the terminated Utes of their Indian status, rather than just their benefits under Federal *statutes* dealing with their status as Indians, the Court of Appeals has reversed the entire body of Indian law, containing a multitude of decisions by this Court to the effect that one who is charged with overreaching in his dealings with Indians must bear the burden of proof to show strict compliance with the statute.

> "The business inexperience of the plaintiff stockholders does not give rise to any duty on the part of the bank to treat them in any manner different than it would treat any other customer inexperienced in business." App. B, 113.

The Court of Appeals did not even consider if the abrupt change in policy implicit in that statement was contemplated by Congress. It is critically important, therefore, that this Court exercise its role in supervising the lower federal courts by declaring the condition of these terminated Indians with reference to the body of law dealing with contracts Indians. Are the plaintiffs Indians, or were they deprived of their Indian status for all purposes along with Government services, as the Court of Appeals has assumed?

This Court has never squarely addressed itself to the question of whether the elimination of an Indian's condition

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[33] The Menominee case was decided to resolve a conflict which developed between the *Sanapaw* case, *op. cit. supra* note 32, and *Menominee Tribe of Indians v. United States*, 388 F. 2d 998 (Ct. Cl. 1967). This court adopted the Court of Claims decision and rejected the *Sanapaw* case. Furthermore, the Court of Claims decision which this Court affirmed relied upon the district court decision in the *Klamath-Modoc* case, which the Ninth Circuit reversed.

as a protected ward also eliminates the effect of other presumptions of the law in the setting of a termination act. It is clear, however, that the holding of the Court of Appeals conflicts with the dictum of this Court in *Menominee Tribe v. United States, op. cit. supra.* where this Court ruled that at least one species of Indian rights – treaty rights – was not eliminated by the language the Court of Appeals relied upon:

> "The provision of the Termination Act (25 U.S.C. §899) that 'all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe' plainly refers to the termination of federal supervision. The use of the word 'statutes' is potent evidence that no treaty was in mind." 391 U.S. 412

We submit that the use of the word "statutes" is also potent evidence that the repeal of the case law of this and other courts dealing with Indians was not intended.

IV

THE BASES ON WHICH THE COURT OF APPEALS REJECTED RULE 10b-5 DUTY THREATENS THE FEDERAL SCHEME OF PROTECTION OF INVESTORS

Since the decision of *Kardon v. National Gypsum Co.*, 73 F. Supp. 798 (E.D. Penn. 1947), an imposing majority of Courts of Appeals have concluded that Rule 10b-5 creates a duty in a securities transaction. Judge Kirkpatrick announced the now familiar "Kardon doctrine."

> "Although not expressly provided for in the statute, a remedy by civil action to enforce such duties and liabilities was available to the plaintiffs. *The duty created is that of diclosure . . .*" (emphasis added) 73 F. Supp. 800.

Accord, *Kohler v. Kohler*, 319 F. 2d 634, 642 (7th Cir. 1964).

The Court of Appeals *rejected* the conclusion of the trial judge that Rule 10b-5 created such a duty, and held that a duty must be found with reference to state law, in the contract with the bank:

> "no such duty was created by the practice of the bank and none was provided in the contract." App. B, 113.

Though not clearly articulated, the decision of the Court of Appeals stands for the proposition that the standards of Rule 10b-5 do not apply to ordinary banking transactions, or to transactions which are a part of a Federal program such as is prescribed by the Act, even though securities are involved. Thus, the Court of Appeals has undertaken to circumscribe the scope of Rule 10b-5 liability on criteria relating to the form of the transaction.

The overriding issue of National concern in the securities aspect of this case, which merits the attention of this Court, is not merely that the Court of Appeals incorrectly applied the law, for there are so many decisions from other Courts of Appeals attesting the wisdom of the Kardon doctrine that an anomalous error might not commend the energy of this Court. The reason, rather, is that the Court of Appeals has chosen to circumscribe the scope of liability under Rule 10b-5 without an inquiry into whether the substance of the transaction is within the policies Congress declared in adopting the securities laws. Such a precedent is a dangerous one, capable of much mischief if it is not corrected promptly by this Court.

Many urge that limits to Rule 10b-5 liability must be drawn, and it may well be that the future trend of cases to be decided by the Courts of Appeals will be in that direction. If so, it is most important that this Court establish it as a guide

that if limits are to be drawn, they must be with reference to the policy of protection of investors which is evident in the securities laws, and not merely according to the form the transaction may take. This case is a peculiarly appropriate subject for the establishment of such a guide because the plaintiffs are persons of a type who have the maximum need for the protections of the anti-fraud provisions: uneducated, poorly acculturated, naive and economically distressed. If the securities laws do not protect these, then who should they protect?

A. *Banking Transactions Are Regulated Under the Rule*

The Court of Appeals conclusion that performance of ministerial banking functions by the bank officers is not a "participation" of the type contemplated by the statute and Rule is squarely in conflict with the Court of Appeals for the Seventh Circuit decision in *Carroll v. First National Bank*, 413 F. 2d 353 (7th Cir. 1969) *cert. denied* 396 U.S. 1003. In the *Carroll* case, the bank and its officers allegedly created a "credit bubble" in connection with purchases of securities. Neither the bank nor its officers were directly involved as purchasers or sellers. Nevertheless, the Seventh Circuit held:

> "We have recently reiterated that frauds 'in connection with' sales of securities are sufficient to invoke the jurisdiction of the 1934 Act and Rule 10b-5 so that the Bank's participation in this credit bubble fraud sufficiently states a claim against it under Section 10(b) and Rule 10b-5. Although the Bank may have neither bought nor sold securities for its own account, it was in a unique position to obtain the necessary time during which it was hoped that the value in the purchased securities would rise sufficiently to allow the participants in the scheme to use them in financing still further purchases. Moreover, as alleged in the amended complaint the Bank was able to conceal the precarious nature of the speculative purchases by arranging for

undisclosed or fictitious persons to bail out certain overdue transactions. Since the Bank was charged with being an aider and abettor in the fraud, it must now meet the merits of that charge. In our opinion the case alleged against it falls well within the outer limits of Section 10(b) and Rule 10b-5." (citations omitted) 413 F. 2d 357.

See also *Fratt v. Robinson*, 203 F. 2d 627, 630-31 (9th Cir. 1953) holding that the anti-fraud provisions are calculated to discourage "those who desire to promote crooked deals" in any effort to "by-pass security-dealing houses under regulation."

B. *The Indian Laws Impose Additonal, Not Inconsistent, Standards*

Several aspects of the Court of Appeals decision, particularly at App. B, 110 and 114, suggest that conduct in implementation of the Act must be measured against the standards of the Act only, and not against the additional standards of Rule 10b-5. Again, the Court of Appeals position is not well articulated, but is revealed in its review of the contents of the contract with the bank negotiated as an implementation of the Act and the function of the bank's Roosevelt office in the termination program, and the conclusion that the fictitious affidavits were prepared in connection with the Act's "first refusal" provisions.

The Court of Appeals for the Ninth Circuit has held that inclusion of a security as a part of a non-securities transaction does not eliminate the need to comply with the provisions of the Rule. See *Errion v. Connell*, 236 F. 2d 447, 454 (9th Cir. 1956):

> "We are of the opinion that the Act of 1934 was designed to cut out 'sharp practices' and fraudulent schemes involving securities, and the fact that there may be a co-mingling of securities with nonsecurities

in the scheme does not oust the United States District Court of jurisdiction."

The reasoning of the Court of Appeals for the Ninth Circuit is sound and should apply to this case, for the true effect of the provisions of the Act and the contract was to place the bank and its officers in a relationship of trust or confidence such as this Court, and other Courts of Appeals, have found amount to a "fiduciary" relationship. The trial court recognized this fact at App. A, 75-77. Fiduciary duties, if violated, import additional standards into Rule 10b-5, rather than excuse any need to comply with the Rule as the Court of Appeals apparently concluded herein. See *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), where this court considered the role of a fiduciary, or quasi fiduciary, under the securites laws, in that case the publisher of an investment service:

> " 'Fraud, indeed, in the sense of a court of equity properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.[34] Nor is it necessary in a suit against a fiduciary . . . to establish all the elements required in a suit against a party to an arm's length transaction. Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." 375 U.S. 194.

The Court of Appeals for the Second Circuit in the recent landmark decision of *SEC v. Texas Gulf Sulphur Co.*, 401 F. 2d 833 (2d Cir. 1968) *cert. den. sub. nom. Coates v. SEC*, 394 U.S. 976 held that violation of such fiduciary duties gave rise to Rule 10b-5 liability, even though there was not a direct buyer-seller relationship, or "privity" such as the Court of Appeals herein considered necessary:

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[34] Quoting from *Moore v. Crawford*, 130 U.S. 122 (1889).

> "By [the Securities Exchange Act of 1934] Congress purposed to prevent inequitable and unfair practices and to insure fairness in securities transactions generally, whether conducted face-to-face, over the counter, or on exchanges. . . . Insiders, as directors or management officers are, of course, by this Rule, precluded from so unfairly dealing, but the Rule is also applicable to one possessing the information who may not be strictly termed an 'insider' within the meaning of Sec. 16(b) of the Act." (citations omitted) 401 F. 2d 848.

To the same effect, see *Kohler v. Kohler*, 319 F. 2d 634, 637-8 (7th Cir. 1964).

C. *There Is no Requirement of Direct Dealing or "Privity"*

The Court of Appeals held that the bank officers, who the trial judge found had created a fraudulent market and implemented the fraudulent sales,[35] were not obligated to disclose the fraudulent practices because they were not directly involved as a purchaser of the Indian stock:

> "the defendant had no obligation to determine whether the recitations made in the affidavit were correct or not[36] . . . Gale had no obligation to perform anything

[35] As regards the bank and its officers, the trial judge ruled that they contracted to discharge, for a fee, the duties of the government; that their "business agent" or "stock transfer agent" agreement obligated them to the duties of fiduciaries as regards the individual Indians and their property, though they were not strict trustees; that the officers of the bank disregarded their fiduciary duties and undertook to acquire the Indians stock in their own interest; that the bank officers acted in the dual role of brokers in the Indian stock, as agents for non-Indian purchasers; that the bank officers withheld material information from the Indians, misrepresented material facts, and engaged in fraudulent acts and practices, in connection with the stock purchases; and that the conduct of the bank officers was within the actual or apparent scope of their employment.

[36] In fact, the "affidavits" were merely blank pieces of paper, which were later completed with pertinent information such as price, name of purchaser, date, etc., so as to be in the form of an affidavit. See App. A, 50-51, 59-60, 84. See also, *E.g.*, App. A, 33-34. One who notarizes such an instrument cannot be said to perform a mere "ministerial act."

but the requested ministerial acts." App. B, 115-116.

In so holding, the Court of Appeals read out of the Rule the language which prohibits fraudulent practices accomplished "directly or indirectly" or "in connection with" the purchase or sale of a security.

> "The 'participation' by defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs." App. B, 115.

The restrictive view of the Court of Appeals is in sharp contrast with the decision in *SEC v. Texas Gulf Sulphur Company, op. cit. supra.* at 860:

> "Congress when it used to phrase 'in connection with the purchase or sale of any security' intended only that the device employed, whatever it might be, be of a sort that would cause reasonable investors to rely thereon, and, in connection therewith, so relying, cause them to purchase or sell a corporation's securities."

The Court of Appeals for the Seventh Circuit in *Brennan v. Midwestern United Life Insurance Co.*, 417 F. 2d 147 (7th Cir. 1969) *cert. denied* 397 U.S. 989 (1970) had no difficulty in discerning a duty created by the statute and Rule extending to a corporate defendant which was not a purchaser or seller. See also *Buttry v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 410 F. 2d 135 (7th Cir. 1969) *cert. denied* 396 U.S. 838:

> "defendant reasons that since there are no allegations that Merrill Lynch defrauded the bankrupt in connection with these sales, there can be no predicate for violation of the Securities Act. However, it is well settled that parties may be liable for violations of the Act and Rule 10b-5 as long as they engage in fraudulent activity 'in connection with' the sale or purchase of securities or in a fradudent 'course of business.'"

CONCLUSION

The disposition of this case by the Court of Appeals represents a harsh application of the Act and the related securities laws which is inconsistent with the purposes of Congress or the realities of the Indian's lives. Those who were legally incompetent on August 26, 1961, were held to be fully competent a short time later by fiat, without regard for whether they were so in fact, and deprived of protections in their securities transactions which other Courts of Appeals have extended to even the highly sophisticated entrepeneurs of Wall Street. The result was unnecessary, for the institutions set up by BIA to dictate the destinies of these Indians, which the Court of Appeals mechanically implemented, were not only not contemplated by the Act, but were contrary to the express requirements of the program which Congress visualized.

The disruption of the lives of the terminated Utes is a National tragedy, even though their numbers are small. The prevention of a recurrence of the tragedy in the lives of the many thousands of other Indian citizens is a matter of sufficient importance to justify review by this Court.

Respectfully submitted,

PARKER M. NIELSON
320 Kearns Building
Salt Lake City, Utah 84101
Attorney for Petitioners

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970
No. 1351 70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band.

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, *et al,*

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

APPENDIX

OF OPINIONS, STATUTES AND REGULATIONS INVOLVED IN THE PETITION FOR CERTIORARI OF AFFLIATED UTE CITIZENS OF THE STATE OF UTAH AND ANITA REYOS, ET AL.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970
No.

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band.

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, *et al,*

Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,

Respondents.

APPENDIX
OF OPINIONS, STATUTES AND REGULATIONS INVOLVED IN THE PETITION FOR CERTIORARI OF AFFLIATED UTE CITIZENS OF THE STATE OF UTAH AND ANITA REYOS, ET AL.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ANITA REYOS, et al,

Plaintiffs,

vs.

FIRST SECURITY BANK OF UTAH, NA., a banking corporation of the State of Utah, UNITED STATES OF AMERICA, JOHN B. GALE and VERL HASLEM,

Defendants,

ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,

Intervenor and Amicus Curiae

No. C 39-65
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial to the court sitting without a jury commencing on Tuesday, October 3, 1967, and continuing through Friday, October 6, 1967, and resumed on Wednesday, October 18, 1967, and concluding on Thursday, October 19, 1967. Adam M. Duncan, Esquire and Parker M. Nielson, Esquire, appeared on behalf of plaintiffs; H. Ralph Klemm, Esquire, Assistant United States Attorney, appeared on behalf of defendant, United States of America; Marvin J. Bertoch, Esquire, of Ray, Quinney and Nebeker, appeared on behalf of defendants, First Security Bank of Utah, N.A., John B. Gale and Verl Haslem. The motion of the Association on American Indian Affairs, Inc., to intervene and file brief as amicus curiae was heard and granted on October 18, 1967, Arthur Lazarus,

Jr., Esquire appearing as counsel. In accordance with the pre-trial order, this trial was confined to the claims of twelve plaintiffs, referred to in the record as "bellweather" or "designated" plaintiffs and general factual and legal matters affecting their claims in common with the claims of the other plaintiffs herein. Said designated plaintiffs are Glen Reed, Fred Burson, Letha Wopsock, Louise A. Case, Melvin Reed, Marguerite M. Hendricks, Joseph Arthur Workman, Leonard Richard Burson, Oran F. Curry, Stewart Eugene Reed, Richard Henry Curry and Charles T. Reed. Witnesses were sworn and testified, documentary evidence adduced and briefs and memoranda of the parties submitted to the court. Whereupon the court, having duly and fully considered the law and the evidence and being fully informed and advised in the premises, and good cause appearing therefor, hereby makes and enters the following

FINDINGS OF FACT

PART I

GENERAL FINDINGS

1. Each of the plaintiffs was, prior to enactment of Public Law 671, adopted by the 83rd Congress on August 27, 1954 (68 Stat. 868, 25 U.S.C. 677, et seq.), a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

2. By reason of the enactment and implementation of Public Law 671, each of the designated plaintiffs was a so-called "mixed-blood" member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

3. The Ute Distribution Corporation was incorporated under the laws of the State of Utah, and its corporate charter issued on or about December 9, 1958; and said Corporation is now and at all times since incorporation has been a corpor-

ation validly existing under the laws of the State of Utah. The purpose of the Corporation, as stated in Article IV of the Articles of Incorporation, was to manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, pursuant to Public Law 671, as amended, a plan for distribution of the assets of the individual mixed-blood members of said Tribe, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution to which the mixed-blood members of the Tribe, as defined and determined by Public Law 671, are now or may hereafter become entitled pursuant to said Public Law 671 or the laws of the United States, and to receive 27.1686 per cent of the net proceeds therefrom and to distribute said proceeds to the stockholders of the Corporation.

The Articles of Incorporation and the contents thereof were approved by the Secretary of the Interior. The Articles of Incorporation provided for 4,900 shares of capital stock of no par value. Each designated plaintiff was issued ten shares of the capital stock of the Corporation on or about the date of incorporation.

4. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides in part that no sale of any stock of said Corporation prior to August 27, 1964, shall be valid unless and until offered to members of the Ute Tribe in such form as may be approved by the Secretary of the Interior. Article VIII further provides that if such Offer to Sell is not accepted by any member of the Tribe, the sale thereof to any person not a member of said Tribe may then be made, but only for the same or greater amount and upon the same terms and conditions upon which it was offered to said members, and provided the Superintendent of the Uintah

and Ouray Reservation certifies on the Stock Certificate that said offer to members of said Tribe was made in accordance with law and the regulations of the Secretary of the Interior.

5. Article VIII of the Articles of Incorporation of said Ute Distribution Corporation provides further that all stock certificates issued by the Corporation until August 27, 1964, shall have stamped thereon the following:

> "Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671 - 83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior."

The said legend was printed on the obverse of all stock certificates of said Corporation issued prior to August 27, 1964, under the legend "Notice of Restriction on Transfer." The stock certificates included no printed form for the endorsement of the Superintendent thereon.

6. All stock certificates of Ute Distribution Corporation bore, on the face of said certificate, in red lettering, the following:

"WARNING

> "This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distribution to the stockholders in the future their respective shares in the proceeds or income from all claims and assets in which the mixed-blood members of the Utah Indian Tribe of the Uintah and Ouray Reservation, Utah, have or will have an interest

under the provisions of Public Law 671 – 83rd Congress, approved August 27, 1954, 68 Stat. 868, as amended. The future value of, or return on this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family."

And: (In black type):

"Countersigned, First Security Bank of Utah, NA., Fourth South Office, Transfer Agent, Salt Lake City, Utah, By

Authorized Officer"

7. At all times pertinent to the claims of plaintiffs herein, defendant First Security Bank of Utah, N.A. (a) was a corporation organized under the laws of the United States as a national banking corporation with offices and branches throughout the State of Utah; (b) maintained an office at Roosevelt, Utah; (c) was transfer agent of and for the capital stock of Ute Distribution Corporation; (d) was a signatory to and bound by the terms of a certain business agent agreement dated December 31, 1958 by and between the Bank and Ute Distribution Corporation; (e) was a signatory to and bound by the terms of a certain trust agreement dated July 26, 1960, by and between the Bank and the Secretary of the Interior; (f) held in its Trust Department at its Main Office in Salt Lake City, Utah, physical possession of all issued and outstanding Ute Distribution Corporation stock certificates of the plaintiffs prior to transfer thereof.

8. At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale and defendant Verl Haslem were employed by the First Security Bank at its Roosevelt office, as Assistant Managers, and were notaries public.

9. At all times pertinent to the claims of the plaintiffs herein, Mrs. Adelyn H. Logan (a) was the Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah; (b) made her home and maintained her residence at Ft. Duchesne, Utah; (c) was acting in her official capacity under the direction of the Superintendent of the Agency with respect to certain matters relating to the transfer of stock of Ute Distribution Corporation, including the receipt and posting of Offers to Sell, preparation of Notification forms that no offer had been received, receiving and examination of affidavits from the original stockholder that he had received in cash the advertised price and from whom, and preparing certificates and letters transmitted to the First Security Bank Trust Department in Salt Lake City, Utah, that such affidavits had been received and were on file at the Agency Office, that the offer to sell had been made in accordance with the law and regulations and the Articles of Incorporation of Ute Distribution Corporation and that there had been no acceptances of said offer.

10. On or about December 31, 1958, First Security Bank and Ute Distribution Corporation entered into a certain business agent agreement. This agreement was at all times subsequent to said date in full force and effect and the Bank was compensated for services rendered thereunder. Said agreement provides in part:

> "The corporation has been organized for the purposes set forth in its Articles of Incorporation, a copy of which is attached hereto and made a part hereof. The Corporation requires a stock Transfer Agent; a Depository for its funds; an office in which to keep its records and books of account and where its business may be transacted; and an agency to keep its books, disburse its funds and otherwise assist it to carry into effect its corporate purposes. The Corporation has requested the

Bank of assist them in these matters and the Bank is ready, able and willing to assist them on the terms and conditions herein set forth.

"1. The Bank will be Stock Transfer Agent for the Corporation. . . .

"3. The Bank will receive and deposit in the Bank all funds paid or delivered to it by the Corporation in accordance with usual bookkeeping and accounting procedures. In this connection, the Bank will receive funds, issue checks against said funds, receive and hold documents, prepare and mail or otherwise deliver statements and reports and generally conduct the business for the corporation.

"4. . . . If, at any time, the Bank is uncertain as to its duties in connection with any matter, it may refrain from any action in connection therewith until said written, certified corporate resolutions and legal advice are received by it. . . ."

11. Pursuant to said business agent agreement, defendant, First Security Bank of Utah, N.A., maintained the stock transfer records of the Ute Distribution Corporation at its First South and Main Office in Salt Lake City, Utah, together with certain other documents and records relating to Ute Distribution Corporation, and maintained a resident office at Roosevelt, Utah, among other things for the purpose of facilitating and assisting "mixed-bloods" in the transfer of Ute Distribution Corporation stock.

12. On or about July 26, 1960, pursuant to Public Law 671, the Secretary of the Interior of the United States and First Security Bank of Utah, N.A., entered into a certain agreeemnt denominated "Affiliated Ute Indian Trust Agreement." A principal purpose of this Agreement was to protect the "mixed-blood" beneficiaries of the trust against the im-

provident dissipation or loss of their assets, including their shares of Ute Distribution Corporation. The Agreement provided that the Bank, as Trustee, could in its sole discretion accept such additional funds or properties granted, conveyed, assigned or made payable to it by the Trustor, by a beneficiary, or by any other person or persons to become a part of the trust property and subject to its terms; and the trustee had the power to terminate the trust as to any beneficiary in its discretion but within the terms and conditions provided in said trust agreement.

13. Antelope Sheep Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of Said Corporation provided for 490 shares of capital stock of no par value. Each "mixed-blood" member of the Ute Indian Tribe, Uintah and Ouray Reservation was issued one share of said capital stock at or about the date of incorporation.

14. Rock Creek Cattle Range Company was incorporated under the laws of the State of Utah on November 18, 1958. The Articles of Incorporation of said Corporation provided for 490 shares of capital stock of no par value. Each "mixed-blood" member of the Ute Indian Tribe, Uintah and Ouray Reservation, was issued one share of the said capital stock at or about the time of incorporation.

15. The Uintah and Ouray Agency caused to be prepared by the University of Utah, on its behalf, a Social Worker's File concerning the personal history of each "mixed-blood." The results of such investigations were submitted to and retained in the files of said Agency, prior to July 26, 1960, and at all times thereafter.

16. The following forms were prepared and promulgated by the Bureau of Indian Affairs: (a) "Offer to Sell" which

was signed by the "mixed-blood" Ute Indian and delivered to the Uintah and Ouray Agency; (b) "Notification" from the Superintendent that no acceptance of the offer to sell had been received and stating that the stock could now be sold for an amount not less than the amount asked from members of the Tribe and that sale should be on the same terms and conditions offered to the members of the Tribe; (c) "Certificate" that an offer to sell had been made, the amount thereof and that no acceptance had been made, signed by the Superintendent of the Uintah and Ouray Agency.

17. The said "Offer to Sell" provided in part:

> "The seller hereby offers to sell certain property described as [blank] for an amount not less than [blank] and upon the following terms and conditions:
>
> "Not less than 10% of the total consideration, made payable to the seller, shall be submitted with the Acceptance of Offer to Sell; within 30 calendar days of Acceptance of Offer to Sell, the balance of consideration, made payable to seller, shall be submitted to the Superintendent, Uintah and Ouray Agency, Fort Duchesne, Utah; failure to pay the balance of the consideration within the specified time will constitute a forfeit of the 10% deposit to the seller.
>
> "All deposits are to be made by certified check, bank draft or postal money order made payable to the seller."

18. In no instance was the "Offer to Sell" of any "mixed-blood" Ute Indian accepted by the Ute Tribe or any member thereof.

19. The regulations adopted by the Secretary of the Interior, pursuant to the provisions of Public Law 671, and as published in 25 Code of Federal Regulations, provide in part (25 C.F.R. 243.8):

"If no acceptance is made by a member of the tribe to purchase such [Ute Distribution Corporation stock] the Superintendent shall notify the mixed-blood member making such offer that no member of the tribe has accepted the offer to sell and the mixed blood member may then sell such stock at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members."

20. The formation of and transfer of assets to Antelope Sheep Range Company and Rock Creek Cattle Range Company was approved by the Secretary of the Interior by reason of the authority granted the Secretary in Section 13 of Public Law 671 (25 U.S.C. 677-1). The formation of Ute Distribution Corporation was acquiesced in by the Secretary of the Interior presumably by reason of authority assumed by the Secretary of the Interior to have been granted under said section. None of the plaintiffs herein was a signatory to the Articles of Incorporation of any of the three said corporations.

21. None of the 12 designated plaintiffs was included as a beneficiary under the trust at the time of the sale of their stock in the Ute Distribution Corporation, although Charles T. Reed and Stewart Eugene Reed theretofore had been covered.

22. As far as the sales of the Ute Distribution Corporation stock were concerned, the employees of the Uintah and Ouray Agency, Bureau of Indian Affairs, followed the procedural steps expressly required by the provisions of 25 C.F.R. Section 243.

23. In all transfers of Ute Distribution Corporation stock made prior to August 27, 1964, the plaintiffs delivered an Offer to Sell, made in writing, to the Uintah and Ouray Agency

of the Bureau of Indian Affairs at Fort Duchesne, Utah, for the purpose of offering said stock to the Ute Indian Tribe and its members. Each offer to sell set forth the number of shares to be sold and the amount the seller would accept for the stock. In each instance, the Offer to Sell was posted by Agency personnel in at least six public places on the Indian Reservation. None of these Offers to Sell was accepted by the Tribe or a member thereof. After the offers had been posted for a priod of 30 days, the Superintendent of the Uintah and Ouray Agency sent a letter of notification to each person who had offered his stock for sale. The notification stated, in each instance, that no acceptance of the Offer to Sell had been made by the Ute Indian Tribe or a member thereof. It set forth the procedure to be followed under the regulations when the stock was to be sold to another person. Unless otherwise noted in the individual case histories, each of the 12 designated plaintiffs received the letter of notification pertaining to each Offer to Sell his stock.

24. No employee or agent of the United States ever participated in the negotiations of any sale of Ute Distribution Corporation stock by the 12 designated plaintiffs.

25. Prior to the sale of their stock, all of the plaintiffs had received periodic distributions of money or "per capita payments" which had been made through the Ute Distribution Corporation. These payments represented distributions from judgments recovered against the Government and from earnings derived from the minerals on the Reservation. On each instance, the checks were made out directly to the recipient and were accompanied by a Corporation voucher stating the purpose of the payment. It was necessary for each of the 12 designated plaintiffs to endorse each check before cashing. There were eight payments made to them prior to August

26, 1963, the date of the first sale, varying from $3.00 to $30.00 per share.

26. It was general knowledge among the mixed-blood members of the Tribe that they were first required to offer to sell their stock to the Tribe before they could sell it to non-Indians. On several occasions, both in general stockholder meetings, as well as in Board of Directors' meetings, the attorney for the Corporation advised the mixed-bloods who were present that it was difficult to tell the value of the stock and that they should retain possession thereof. The mixed-bloods were generally uninformed and unaware of the value of the mineral interests of the Ute Indian Tribe or how such value affected that of their Ute Distribution Corporation stock.

27. From August 26, 1963 until August 27, 1964, over 800 shares of the 4,900 shares of Ute Distribution Corporation stock had been transferred by the original owner to a non-Indian buyer. On the date of trial, between 45 and 47 per cent of the 4,900 shares of the Ute Distribution Corporation stock had been sold by the original owners.

28. On August 26, 1961, the Secretary of the Interior published the following Termination Proclamation in the Federal Register, No. 165, Volume 26, Page 8042:

> "Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members
>
> "Pursuant to the authority contained in Section 23 of the Act of August 27, 1954 (68 Stat. 877, as amended; 25 U.S.C. 677v), it is hereby proclaimed that the Federal restrictions on the property of each individual mixed-blood member of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah having been removed, the Federal trust relationship to such indi-

vidual is terminated and that effective midnight, August 27, 1961, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

STEWART L. UDALL,
Secretary of the Interior

August 24, 1961"

[F.R. Doc. 61-8225; Filed Aug. 25, 1961; 8:49 a.m.]

This proclamation took effect on August 27, 1961. Pursuant thereto and by operation of Public Law 671, the mixed-bloods, on August 27, 1961, lost many rights, privileges and services which had theretofore been granted to them by reason of their status as Indians. These included hunting and fishing rights on the Reservation, free public health services, exemption from taxation of land, law and order services, economic and development services, education assistance, employment preferences, bank services, water rights, credit and financing services, real property management services and social services.

29. The devision of the assets of the Ute Indian Tribe between the Tribe and the mixed-blood members thereof, and the division of the individual assets to said mixed-bloods, was completed prior to August 27, 1961, aside from realization on individual interests allocated by said division, and the custody of stock certificates issued to accomplish such division.

30. As to most if not all of the transfers of Ute Distribution Corporation stock by plaintiffs, either defendant Gale or

defendant Haslem, or some other officer, agent or employee of the defendant First Security Bank, endorsed the stock certificate or other instrument of transfer in the capacity of a signature guarantor.

31. It was generally known among the mixed-bloods that said stock should not be sold for less than the amount advertised, and that the stock had substantial value; but the mixed-bloods who sold their stock were generally less well informed, and generally less capable of appreciating and understanding the significance of such information than the white persons with whom they dealt and usually were acting under extreme economic pressure.

PART II

INDIVIDUAL CASE HISTORIES OF THE 12 DESIGNATED PLAINTIFFS

1. GLEN V. REED, M.B. Number 354, sold 10 shares.

(a) *Personal background*: He was born April 4, 1919. The Social Workers' File of the Uintah and Ouray Agency reports that he was sent to Los Angeles, California on January 25, 1956 by the Bureau of Indian Affairs for vocational training; that he was a very poor trainee and spent more time in the County jail than he did in training and returned to Utah on June 1, 1956; that it would appear from his record that he has problems in conforming to the demands of society. The file indicates 15 criminal convictions for minor criminal offenses during the period December 29, 1953 through July 1, 1959. Superintendent Zollar made no efforts to place Mr. Reed under a trust or to furnish other special protection to him in relation to his stock. Mr. Reed is the father of Glennis

Joan Reed Daniels, M.B. No. 355, Judy Gay Reed, M.B. No. 356, Linda Reed, M.B. No. 357, Joelene Reed, M.B. No. 358 and Marjorie Ellen Reed, M.B. No. 359, all of whose assets were administered by First Security Bank under the Affiliated Ute Indian Trust Agreement. Mr. Reed is a high school graduate and a veteran of service in the United States Army, from which he was honorably discharged. He believed the stock represented some per capita payments. He also believed that the stock represented some interests in the reservation.

(b) *First Transaction*: On or about July 8, 1964, five shares were sold to John B. Gale for $1,750, paid by a First Security Bank cashier's check, after the shares had been offered for sale at the Uintah and Ouray Agency on June 1, 1964, at $350 per share and the offering completed on August 10, 1964. A document denominated "stock power" dated August 10, 1964, and a document denominated "affidavit" reciting that he received $1,750 dated August 10, 1964, were signed by him, but the names of the transferees were not filled in at the time they were signed. The affidavit was notarized and the signature on the stock power guaranteed by John B. Gale. Mr. Gale purchased these shares for Neal H. Phelps and Esther Phelps of Arizona, both of whom were and are unknown to Mr. Reed, pursuant to an arrangement whereby they had deposited funds with First Security Bank at Roosevelt, Utah, for the purpose of acquiring Ute Distribution Corporation stock, and Mr. Gale was paid $530 per share for the stock by the Phelps. Mr. Reed was not advised that the stock was being purchased for the Phelps, or the price which they were paying for it. A certificate dated August 13, 1964, signed by B. Narcho, acting Superintendent, was issued to First Security Bank reciting that the law and regulations relative to the offer had been complied with. In August, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of

Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on August 25, 1964, by the bank.

(c) *Second Transaction*: During the latter part of August, 1964, five shares were sold to Verl Haslem for $2,000 pursuant to a telephone agreement and formally transferred about August 31, 1964. The shares were actually transferred to Robert E. Shaw of Dixon, Illinois, for an amount which is not of record. Reed signed his name to the endorsement form on the reverse of stock certificate No. 844 on the hood of Haslem's automobile in the nighttime and Reed did not read the legends on the certificate. His signature was guaranteed by Haslem. Reed does not know Shaw and was not advised by Haslem that the stock was being transferred to Shaw or the amount that Shaw was paying for it. The shares were not offered for sale with the Uintah and Ouray Agency. Mr. Reed signed a receipt for $2,000 on August 30, 1964.

(d) Additional Facts: In the first transaction, Reed discussed the proposed sale with Gale prior to June 1, 1964, when his offer to sell was filed with the Uintah and Ouray Agency at which time he requested $2,000 but was told that $1,750 was the most people were paying unless he made a deal with Nick (Richard) Murray for cash and an automobile, whereupon he offered them for sale at the suggested price of $1,750. He made his deal with Gale, who advanced him money on it, prior to the date when the advertising was completed. In the second sale, he was importuned to sell by Haslem, who contacted Reed in Salt Lake City by telephone. At the request of Mr. Haslem, they met in Heber, Wasatch County, to close the transaction. Haslem had Reed's certificate, which

Reed had never before seen, with him when they met. Reed requested $2,500 from Haslem, who told him that $2,000 was the most he could pay.

2. FRED LAROSE BURSON, M.B. NO. 22, sold 10 shares.

(a) *Personal Background*: He was born April 11, 1935. His Social Workers' File at the Uintah and Ouray Agency showed that he drank to excess, had an extensive record of minor criminal offenses; that the University of Utah field representatives had been unable to help him; that the Bureau of Indian Affairs had sent Mr. Burson to Weber College for a course in auto mechanics, which he started in October, 1957, and terminated in November, 1957. The said report concluded: "There seems to be little to be done for Fred." Mr. Burson was, at the time of this trial, serving time in the Salt Lake County Jail for public intoxication. Mr. Burson served in the U.S. Air Force in 1956 and 1957. The Superintendent made no efforts to place Mr. Burson under a trust or to furnish other special protection to him in relation to his stock.

(b) *First Transaction*: On or about November 6, 1963, six shares were sold to R. Earl Dillman for two 1956 model Ford automobiles and $1,000 cash. When the documents of transfer were presented to the Uintah and Ouray Agency and First Security Bank, they had been altered so as to actually transfer six shares. He filed an offer to sell six shares with the Uintah and Ouray Agency on August 8, 1963, for $2,500, but there was no acceptance of the offer. The offering was completed on November 4, 1963. A document denominated "affidavit" reciting that he received $2,500 was signed by him, dated November 6, 1963, and notarized by Dick Bastian. A second document denominated "stock power" which was prepared on Duchesne County letterhead, was also signed by him, dated November 6, 1963, and the signature guaranteed by John

B. Gale. A certificate dated October 3, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the required affidavit had been executed by which Burson declared he had received the advertised value. There is no evidence that the two automobiles purchased were worth less than $1,500.

Neither Gale, Haslem nor the Bank had anything directly to do with the sales negotiation, nor did they receive anything from the sale.

(c) *Second Transaction*: In December of 1963, four shares were sold to one Jack Turner, doing business as B.L.I. Trailer Sales, for a trailer house. Four shares were offered for sale on December 4, 1963, for $2,000 and no acceptance of the offer was received. The offering was completed on February 6, 1964. At the time of sale, he signed a document denominated "stock power" and a document denominated "affidavit" both of which were signed in the presence of John B. Gale at First Security Bank, Roosevelt. Both documents were guaranteed and notarized, respectively, on February 10, 1964, by John B. Gale. A certificate dated February 10, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with, and that the affidavit had been executed and was on file. Neither Gale, Haslem nor the Bank directly received anything from the sale except a fifty cent notary fee paid to the Bank and they did not participate in the negotiations involved in the sale.

(d) *Additional Facts*: The documents filed with the Superintendent relative to the first sale, bear the notations of Mrs. Logan to the effect that the word "five" was typed in and "six" written over it in the place where the number of

shares was indicated, but she did nothing. Mrs. Logan also knew that Mr. Bastian, the notary on the affidavit in the first sale, was a partner of Mr. Dillman, the transferee, in a used car business. The files of the Indian Agency also indicate that Burson had sold one share of his stock to one Sewell Massey on January 30, 1964. The offering provisions had not yet been completed and the files indicate that the document was never transmitted to the Bank and the transfer was never completed. In relation to the first sale, Burson never actually appeared before John B. Gale to sign any documents.

3. LETHA HARRIS WOPSOCK, M. B. NO. 467, sold 15 shares.

(a) *Personal Background*: She was born February 19, 1917. She is married to full-blood John Wopsock and has ten children. She is the only mixed blood member of the family. She completed 10 years of school, can read but her understanding of what she reads is limited. Her Social Workers' Report in the files of the Uintah and Ouray Agency indicates requests for children's funds; that Mr. Wopsock was considered somewhat improvident; that she incurred many debts in Roosevelt; and that it was obvious that this large family would have difficulty in managing on the income of Mr. Wopsock. The said report concludes: "It is possible that Mrs. Wopsock should be under the supervision of a trustee following termination, but we are not making such a recommendation." At June 15, 1960, Mrs. Wopsock owed First Security Bank, Roosevelt Branch, $336.60 on a delinquent contract for a range and refrigerator. An appended document entitled "Credit History" and dated July 1959, states that "The Wopsocks are known for going too far in debt, both here and with commercial businesses." The Superintendent made no efforts to place Mrs. Wopsock under a trust or to furnish other special protection to her in relation to her stock. In addition to the 10 shares

issued to her, Mrs. Wopsock inherited an additional 5 shares from her mother, Annie Pike Harris.

(b) *First Transaction*: On or about August 1, 1963, she exchanged five shares of Ute Distribution Corporation Stock and a 1960 GMC pick-up truck to one Clyde Murray for a new 1962 GMC pick-up truck and camper, and still owed him $54 per month for three years. The stock was offered for sale with the Uintah and Ouray Agency on September 3, 1963, for $2,500 and no acceptance was received. The offering was completed on November 4, 1963. She signed a document denominated "stock power" and a document denominated "Affidavit" reciting that she received $2,500 which were guaranteed and notarized, respectively, by John B. Gale. A certificate dated November 8, 1963, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. There is no evidence as to the actual value of the truck exchanged for the stock. Neither Gale, Haslem nor the bank directly received anything from the sale except a fifty cent notary fee.

(c) *Second Transaction*: On or about February 24, 1964, she transferred two shares to one Bill Hoopes in exchange for satisfaction of a bill at the trading post and some cash, plus some additional credit at the trading post which she considers to have a combined value of $1,400. Five shares were offered for sale with the Uintah and Ouray Agency on December 16,

1963, for $3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document denominated "stock power" before John B. Gale on February 24, 1964, and Gale also guaranteed the signature. She also signed a document denominated "affidavit" dated February 18, 1964, to the effect that she received $1,400 cash. A certificate dated February 26, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Neither Gale, Haslem nor the bank directly received anything from this transaction except a fifty cent notary fee.

(d) *Third Transaction*: On August 28, 1964, she sold an additional 3 shares to Mr. Hoopes for credit at the Trading Post which she valued at $1,000. These shares were not offered for sale with the Uintah and Ouray Agency. She signed a document denominated "stock power" which was guaranteed by John B. Gale.

(e) *Fourth Transaction*: After August 27, 1964, she sold 3 shares to John B. Gale for a sum which she believes to be about $350 cash. She endorsed a document denominated "stock power" which was undated and incomplete as to transferee. The stock was actually resold to Norval R. Johnson and Fern Johnson whose names were filled in as transferees. She does not know the Johnsons, and was not told that her stock was being transferred to them. Her signature on the stock

power was guaranteed by Verl Haslem. The shares were never offered for sale at the Uintah and Ouray Agency.

(f) *Fifth Transaction*: In October, 1964, she sold one share to Mr. John B. Gale and on November 3, 1964, she sold one share to Mr. Gale. She received $400 and $350 respectively for each share, which was paid to her in installments as she requested it. She endorsed certificates Nos. 958 and 922 in relation to these transactions, neither of which was offered for sale with the Uintah and Ouray Agency.

(g) *Additional Facts*: In relation to her sales to John B. Gale, Mrs. Wopsock made the sales because she needed money for Christmas. She asked $400 per share from Mr. Gale but he told her $300 was the most he could pay and they finally agreed to a price of $350. Gale did not tell her in relation to the Fourth transaction that he was acting as agent nor that he was reselling the stock at a higher price, which was the fact. She signed the back of the Ute Distribution Corporation stock certificate in relation to the Fifth transaction, but did not read it and was not permitted to read it by Mr. Gale. At the time of the first offer to sell, she went to Mrs. Logan at the Uintah and Ouray Agency, who instructed her in how to offer the stock. Mrs. Logan advised her that the shares were worth in excess of $700 each. In relation to the first sale, Gale was told that she was getting a truck. In each case Mrs. Wopsock went to the buyer to sell her stock. She was satisfied with her sale to Mr. Hoopes for $700.

4. LOUISE ALLEN CASE, M.B. No. 39, sold 10 shares.

(a) *Personal Background*: She was born January 21, 1916, and has six children. Her Social Workers' File at the Uintah and Ouray Agency indicates that she had received assistance from the Duchesne Department of Public Welfare

since 1952, and regularly since 1955; that she was divorced and her husband had a heart condition, making it impossible for him to contribute more than $20 per month to the support of the children. The report concludes: "Mrs. Case will, no doubt, need continued help and guidance from the Department of Public Welfare. Supervision by a Trustee is not indicated." Superintendent Zollar took no action relative to placing Mrs. Case under a trust or to establish any other special protection for her in relation to her stock. She borrowed money from the tribal credit fund to purchase a home, land and livestock. The case worker stated that she responds well to local adult educational offerings under the University of Utah program. In 1959 she had a realty mortgage on two city lots, which included buildings and improvements covered by fire insurance in the sum of $7,000.

(b) *First Transaction*: On or about November 6, 1963, she sold five shares to one LaVere Labrum for a 1957 Ford automobile and $1,700. These shares were offered for sale at the Uintah and Ouray Agency on September 9, 1963, for $2,500, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On November 6, 1963, she signed two sets of documents entitled "stock power" and "affidavit" assigning three shares to Lynn Labrum and Marion Labrum and two shares to Lloyd L. Labrum and Oleta M. Labrum. She believes that these documents were complete on their face when they were signed, at the office of John B. Gale and in his presence, and each of them were afterwards guaranteed and notarized, respectively, by John B. Gale. The affidavits recite that she received $1,500 cash from Lynn Labrum and Miriam Labrum and $1,000 cash from Lloyd L. Labrum and Oleta M. Labrum. At the time these documents were signed, Gale delivered to her a First Security Bank cashier's check in the sum of $2,500 which she endorsed and returned to Gale who then paid her the sum of $1,700,

and paid Labrum for the automobile. She had discussed the matter of sale with LaVere Labrum prior to the time the shares were offered for sale, and Labrum gave her $50 cash and some gasoline during the period of time that the stock was being offered with the understanding that it would be applied toward the sale. A certificate dated November 8, 1963, signed by Superintendent Zollar was issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. The car was valued for the purposes of the transaction at $700 and its actual value is not disclosed by the evidence. Gale reecived a fifty cent notary public fee.

(c) *Second Transaction*: She sold three shares to Richard Murray for $1,320, $440 per share. On February 24, 1964, she offered five shares for sale with the Uintah and Ouray Agency for $2,500 and acceptance of the offer was never received. In fact, the offering procedure was not completed until May 7, 1964. Mrs. Case, at the time of sale, signed blank documents denominated "stock power" and "affidavit" which were later filled in by some person whose identity is unknown to her, guaranteed and notarized, respectively, by Mr. John B. Gale and dated May 7, 1964. The documents show the transferees to be Tillie Lerma Gullstrom and Laura J. Wood of Mason, Illinois, both of whom were clients of Mr. Gale, and Mrs. Case does not know either of them nor was she advised that they were the purchasers of her stock or the amount which they were paying for it. The affidavits were completed to

show that she received $1,400 and $700, respectively. On May 15, 1964, a certificate was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On May 15, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on May 25, 1964, by the bank. She stated she was satisfied with the deal she made with Murray at the time.

(d) *Third Transaction*: In June of 1964, she sold two shares to one Dick E. Bastian for $800. The shares had been offered for sale with the Uintah and Ouray Agency as recited in relation to her second transaction. She executed a document denominated "stock power" and a document denominated "affidavit" reciting that she received $1,000 but, in fact, at the time of the transaction, she received a check for $800 from Bastian and an additional check for $200 which was immediately endorsed and returned to Bastian. A certificate dated June 29, 1964, was signed by Superintendent Zollar and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On June 29, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on July 9, 1964, by the bank.

(e) *Additional Facts*: Although Mrs. Case received automobiles, she was then and now is unable to drive. Mrs. Case was in need of money and on public welfare at the time of the first sale and the second and third sales were made because she was in further need of money, having been taken off welfare by reason of the money which she was supposed to have received on the first sale. When the documents of sale relative to the third sale were received by Mrs. Logan at the Uintah and Ouray Agency, she noted that the purchaser was also the notary on the affidavit, but did not attempt to verify the regularity of the transaction. In relation to the first transaction, Mrs. Case attempted to read the documents being signed by her in the presence of Mr. Gale, but he immediately took them away from her and told her that she wouldn't understand them anyway. On the first sale, Gale gave her a cashier's check, which she endorsed and returned to Gale, who then paid Labrum. When Mrs. Case objected to this procedure, Gale said, "Well, you got a car didn't you?" Mrs. Case had already sold stock in the Antelope Sheep Range Company and Rock Creek Cattle Range Company and was familiar with the offering procedure and the requirements of the regulations issued in connection therewith. She knew that she wasn't supposed to sell the stock for less than the offered price.

5. MELVIN REED, M.B. NO. 380, sold 10 shares.

(a) *Personal Background*: Mr. Reed was born on March 27, 1937. His Social Workers' File at the Uintah and Ouray Agency reads in part: "Mr. Reed completed 4 months of vocational training in diesel mechanics in 1958, dropped out and returned to the reservation. He had earlier taken eight months of training in radio and TV repair provided by the Bureau in Denver, 1957-1958 and dropped out after numerous encounters with the law and because of financial and scholastic prob-

lems. . . . He does have a court history with two offenses in Salt Lake City and three offenses committed in Uintah and Duchesne Counties." The report further stated that "This individual is apparently able to manage his own affairs without supervision." An appended report reads in part: "Mr. Reed discontinued his training after numerous encounters with the law. Mr. Reed had difficulty with finances while in Denver. Relocation reports reveal that Mr. Reed was a poor student." The Social Workers' File also contains numerous letters setting forth the financial obligations, problems and related matters of Mr. Reed. Superintendent Zollar took no action relative to placing Mr. Reed under a trust or otherwise affording him special protection in respect to his stock. Mr. Reed was incarcerated at the Utah State Penitentiary at the time of trial in this case, having been returned to the penitentiary for parole violations after being initially committed for forgery.

(b) *First Transaction*: On or about the 11th day of March, 1964, Mr. Reed sold ten shares of stock to one Richard Murray for a 1959 Cadillac which was returned to Mr. Murray about eleven days later, at which time he was given $1,000. Mr. Reed also received approximately $480 in cash at the time of the sale, and Mr. Murray applied approximately $25 to the payment of a fine against Mr. Murray for drunkenness. All ten shares were offered for sale for the sum of $6,500 with the Uintah and Ouray Agency on September 27, 1963, and no acceptance of the offer was received. The offering was completed on November 4, 1963. On March 11, 1964, he executed a document denominated "stock power" and a second document denominated "affidavit," both of which were blank forms at the time they were signed and both of which were later guaranteed and notarized respectively by John B. Gale so as to indicate that he received the sum of $6,500 from Mr. Murray. In reply to Gale's question whether Reed had got the money the latter said that "Everything was square." The

blanks were filled in out of Mr. Reed's presence by someone whose identity is unknown to him. Gale and Murray appeared to Reed to be in competition for the purchase of these shares. On March 16, 1964, a certificate was signed and issued to First Security Bank indicating that the law and regulations relative to the offer had been complied with. On March 16, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 24, 1964, by the bank.

(c) *Additional Facts*: Mr. Reed was released from the Utah State Penitentiary on parole on or about March 10, 1964, and was arrested the same day in Roosevelt, Utah, for public intoxication. On or about March 11, 1964, he was brought before defendant John B. Gale as Justice of the Peace, who inquired if he wished to sell his Ute Distribuiton Corporation stock, to which Mr. Reed replied, "I don't know" and Judge Gale thereafter sentenced him to a fine and he was released after he told Gale he would have to pay the fine from the sale of his stock. Later that same day, Mr. Richard Murray came to Mr. Reed's sister's home where he was sleeping off the effects of intoxication, with a used Cadillac and said that he understood Mr. Reed was interested in buying a Cadillac. They went for a ride in the car, during which time he and three others drank a pint of whiskey, supplied by Mr. Murray, and after the whiskey was consumed, Mr. Reed agreed to purchase the Cadillac. The following day, while Mr. Reed was suffering the after effects of intoxication, the blank forms were signed before Mr. Gale. About ten days later, while Mr. Reed was again intoxicated and the automobile was being

operated by a female companion, it was involved in a traffic accident in Heber City, Utah, and a short time thereafter, Mr. Murray met with Mr. Reed in Heber City, and the Cadillac was returned to him in exchange for the $1,000 recited above. A short time later, he was reurned to the Utah State Prison for a parole violation where he remained to the time of the trial. No evidence was adduced as to the reasonable market value of the Cadillac, and no complaint was made by Reed concerning its quality.

6. MARGUERITE MURRAY HENDRICKS, M.B. No. 178, sold 10 shares.

(a) *Personal Background*: She was born May 30, 1903, and has three children. Her Social Workers' Report at the Uintah and Ouray Agency reads in part:

> "Mrs. Hendricks is said to have been married several times in the past, but we have no record of it. . . . During the past year or so she became so disturbed over the planned termination that she directed a series of complaint letters to the Commissioner of Indian Affairs, Assistant Secretary Ernst and to Senators. At the same time, she harrassed Agency officials. . . . The Agency Superintendent's letter to the Commissioner pointed out that Mrs. Hendricks reflects the attitude of her family with respect to termination. The entire group felt they should have been in the Full Blood Roll, but the operation of Public Law 671 prohibited them from doing so. The attitude of Mrs. Hendricks and the entire Murray clan on termination makes it impossible for anyone at the Agency to have any semblance of a working relationship with them. Credit History: On 9-29-52, Mrs. Hendricks borrowed $7,953.75 (CF loan #800) to be spent in this manner: $6,000.00 for 200 sheep . . . Mrs. Hendricks reported she lost her sheep and did not know what became of them . . . The

credit office reported that it is not easy to converse with Mrs. Hendricks. She does not always know what one means and also one does not know what she means."

The report also said:

> "In her complaints she stated she was writing on behalf of her fellow members of the Ute Citizens and requested the abolishment of termination, and the removal of Attorney John S. Boyden. She complained that her delinquent irrigation charges amounted to $1,353.19, when she did not use this service; and when she sold her 40 acre property this would be deducted from the sale price which she thought was unfair."

The file also contains a letter recieved by the Indian Agency on July 20, 1960, wherein Mrs. Hendricks states that she is "without a crumb of food in my home. Still I am staying and trying to take care of my garden and my chickens. . . . I have definitely no support or transportation and I am desperately in need of assistance. . . ." and a letter dated October 12, 1959, wherein Mrs. Hendricks says in part, "I do not have means of transportation, neither do I have the price of a phone call. . . . I received $100 from my per capita and I laid it down on my grocery bill and I still have a grocery bill of $300. . . . My rent was due on the 7th and my landlord is threatening to throw me out. . . . I have been helping my little grandchildren to live. So I never have a dime for my own benefit and it is getting plenty tough. . . ." A letter of January 6, 1959, in the file states that Mrs. Hendricks "needs welfare assistance for the following: food, coal, utilities and rent for the three months." Despite the foregoing, Superintendent Zollar took no action to place Mrs. Hendricks under a trust or to establish other special protection in relation to her stock. Letters written by her appearing in the agency file reveal that she is acquainted with the accepted form of such correspondence, that

her penmanship is good and her grammar, spelling, punctuation and vocabulary much above the average for members of her tribe and at least fair as measured by general adult standards.

(b) *First Transaction*: On November 5, 1963, she sold five shares to Clyde R. Murray for a 1962 Comet automobile. The shares were offered for sale at the Uintah and Ouray Agency on September 3, 1963, for $700 per share, and no acceptance thereof was received. The offering was completed on November 4, 1963. Mrs. Hendricks signed a document denominated "stock power" and a document denominated "affidavit," the signature on the stock power being guaranteed by John B. Gale and the affidavit notarized by Jerry M. Murray. The affidavit recited that she received $3,500 but she did not receive anything for said stock beyond the Comet automobile. The documents were blank forms at the time she signed them. A certificate dated November 8, 1963, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Gale handled the notarization of the affidavit and guaranteed the signature but did not participate in the sales transaction except as in these findings otherwise indicated.

(c) *Second Transaction*: On February 18, 1964, she sold five shares of stock to Richard Murray in exchange for some

real property in Neola, Utah. The stock was offered for sale at the Uintah and Ouray Agency on January 6, 1964, at a price of $3,500 and no acceptance of the offer was received. The offering was completed on February 6, 1964. She signed a document denominated "stock power" and a document denominated "affidavit" both of which were blank forms at the time she signed them and both of which were dated February 18, 1964, with signature guaranteed and the affidavit notarized by John B. Gale. The affidavit recited that she received $3,500, although she received no cash in this transaction. A certificate dated February 18, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 20, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 2, 1964, by the bank. Gale did not participate in the sales transaction and he received only a fifty cent notary fee.

(d) *Additional Facts:* Mrs. Hendricks is hard of hearing and appeared to have considerable difficulty in understanding questions on the witness stand. She also appeared to be unable to intelligently understand the transactions in which she sold her stock, or the nature of the consideration which she received for it. The documents presented to Mrs. Logan at the Uintah and Ouray Agency note the family relationship between the purchaser in the first sale and the notary, but she did not attempt to determine the regularity of either transaction.

7. JOSEPH ARTHUR WORKMAN, M.B. Number 474, sold 7 shares.

(a) *Personal Background*: He was born on July 2, 1909. The social worker's file at the Indian Agency states in part: "Joseph A. Workman is a member of the Board of Directors of the Affiliated Ute Citizens. There seems to be little information about him in Bureau files other than Credit and IIM. In 1954, he apparently was living in Richfield and in 1956 he reported his address as Altonah. We do not know the reasons for the moves, nor do we know how Mr. Workman supports himself and wife . . . we presume that he can manage his own affairs in a satisfactory manner." Superintendent Zollar took no action to place Mr. Workman on a trust or otherwise to establish special protection in relation to his stock. Mr. Workman was one of the five members of the Board of Directors of the Affiliated Ute Citizens from 1958 to 1961. He met with bank officers and agency officers and tribal attorneys and participated in the formulation of the Transfer Agent Agreement and in the division of the assets of the Ute Indian Tribe between the mixed blood and full blood members thereof. He also assisted in the division of the assets to the individual mixed blood members. At the time of trial he was employed in a store and formerly operated his own business, hiring employees and handling various types of oil and gas products. Mr. Workman frequently heard advice from the tribal attorney and others that the half bloods should retain their stock.

(b) *First Transaction*: On or about February 10, 1964, he sold six shares of stock to one Robert Huish for $3,000. The stock was offered for sale with the Uintah and Ouray Agency on November 26, 1963, for $500 per share, or a total of $3,000. At the time of sale, he signed a document denominated "Affi-.

davit" before John B. Gale at First Security Bank in Roosevelt, acknowledging receipt of $3,000, and the document was complete at the time it was signed by him. He also signed a document denominated "stock power" transferring six shares of stock to Huish, signature being guaranteed by Gale, and this document was also complete at the time it was signed by him. A certificate dated February 13, 1964, was signed by Superintendent Zollar and submitted to First Security Bank stating that the law and regulationss relative the offering were complied with. On February 14, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on February 18, 1964, by the bank. Mr. Workman was satisfied with one of his sales for $500 per share and still is. He was in a position to know more about the value of the stocks than most of the other half bloods.

(c) *Second Transaction*: On or about November 27, 1964, he sold one share of stock to Verl Haslem for $350 by endorsing stock certificate number 712. Said stock certificate indicates that the stock was actually transferred to an Acel Haslem, a member of the Verl Haslem family. This stock was not offered for sale at the Uintah and Ouray Agency, and the sale was negotiated at First Security Bank in Roosevelt.

(d) *Additional Facts*: Mr. Workman was formerly a member of the Board of Directors of the Affiliated Ute Citizens, a group which represented the mixed blood group, and went out of existence at or about August 27, 1961. He knew

and understood that his Ute Distribution Corporation stock represented an interest in the tribal minerals but on the occasion of each of his two sales he was under pressure to make payments on outstanding loans at First Security Bank at Roosevelt, Utah, and would not have sold his stock had he not been under pressure from said creditor. Mr. Workman testified that the Ute Distribution Corporation took over from the Affiliated Ute Citizens on August 27, 1961. He knew the purpose and had more than the ordinary knowledge of the possibilities of the corporation, as well as what his stock represented. The distribution of the stock was part of the distribution of assets of the tribe to the individual members. He attended numerous meetings prior to termination where termination was discussed. Thirty-five to seventy-five mixed-bloods would attend these meetings. Occasionally they discussed the potential value of the stock and Mr. John Boyden, counsel for the council of the mixed-bloods, often advised the people in attendance to retain their stock.

8. LEONARD RICHARD BURSON, M.B. No. 24, sold ten shares.

(a) *Personal Background*: He was born September 24, 1920, and a Social Workers' Report at the Uintah and Ouray Agency states in part: "As can be ascertained from his long criminal record, Mr. Burson drinks to excess." Attached to this report is a summary indicating that Mr. Burson had 15 convictions for minor criminal offenses during the period of July 21, 1953, through July 1, 1959. He also has four minor children who are full bloods. Burson had about twelve years of schooling but did not graduate from high school. He is a sawmill worker. Superintendent Zollar took no action relative to placing Mr. Burson under a formal trust or to determine if he

was in need of assistance or otherwise protect him in relation to his stock.

(b) *First Transaction*: On or about November 6, 1963, he sold ten shares of stock to LaVere Labrum for a 1960 Ford automobile and $3,200 in cash. His stock was offered for sale with the Uintah and Ouray Agency on August 29, 1963, at a price of $5,000 and no acceptance of the offer was received. The offering was completed November 4, 1963. He executed two documents denominated "Stock Power" at First Security Bank before John B. Gale on November 6, 1963, which indicate that five shares were transferred to Lloyd L. Labrum and Olete M. Labrum, and five shares transferred to Lynn Labrum and Marion Labrum. He was accompanied to the offices of Mr. Gale at the Bank by Lloyd Labrum and Lynn Labrum, who are partners in L & L Motor Company, Roosevelt, Utah. Two documents denominated "Affidavit" of the same date reciting that he received the full advertised price are also in the file, and the court finds from a preponderance of the evidence that he signed them despite his present belief that he did not. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Mr. Burson was satisfied with this sale at the time it was made. There is no express evidence to show the value of the car but he believed its value was sufficient with the cash received to make up the $5,000 or the equivalent for his stock. Gale did not participate in the sales negotiations and received nothing from the transaction except a notary fee.

9. ORAN F. CURRY, M.B. No. 59, sold ten shares.

(a) *Personal Background*: His Social Worker's File at the Uintah and Ouray Agency reads in part: "At this point the family owed $2,322.23 on a Tribal loan. Three other loans since 1952 have been paid in full. According to the credit report Mr. and Mrs. Curry have quite an extensive credit record, much of it is prior to May 1952. They have required and received a great deal of service by the various branches of the Agency.'" After receiving the foregoing information, Superintendent Zollar took no steps to place Mr. Curry under a formal trust or determine if he was in need of assistance or otherwise protect him in relation to his stock.

(b) *First Transaction*: On or about February 14, 1964, he sold one share to one John Chasel and on or about February 19, 1964, he sold one share to one Orin Swain, both of which were sold for approximately $85, and automobile repairs valued at $400 at Mr. Swain's and Mr. Chasel's business establishments. An offer to sell covering five shares was filed with the Indian Agency on September 9, 1963, for $3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On or about February 19, 1964, he executed documents before John Gale which were denominated "stock power" and "affidavit," which were notarized and guaranteed by John B. Gale, respectively, which were blank forms at the time he signed them. He made no objection to signing a blank affidavit. The affidavits were later completed so as to recite that he received $700 cash. A certificate was signed by Superintendent Zollar on February 26, 1964, and submitted to First Security Bank reciting that the law and regulations relative to offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank

that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee.

(c) *Second Transaction*: On or about March 24, 1964, he sold three shares to one Clyde R. Murray for approximately $1,800 cash. This sale was also covered by the offer to sell referred to in relation to the first transaction. On the date of sale, he executed documents denominated "stock power" and "affidavit" before John Gale, reciting that he received $2,100, which were respectively guaranteed and notarized by Mr. Gale, but which were incomplete forms at the time they were signed by him. A certificate dated March 31, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on April 2, 1964, by the bank. Except as in these findings indicated, Gale did not participate in the sales negotiations and received nothing but a fifty cent notary fee.

(d) *Third Transaction*: On or about August 18, 1964, he sold two shares of stock to one Dick Bastian for $300 per share cash. On July 7, 1964, he offered five shares of stock for sale at the price of $3,000 and no acceptance thereof was re-

ceived. The offering was complete on August 10, 1964. On the date of sale, he executed a document denominated "stock power," signature of which was guaranteed by John B. Gale, and a document denominated "affidavit" which was an incomplete form when he signed it, reciting that he received $1,200 which was notarized by Irene K. Ruppel. On August 26, 1964, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On August 31, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on September 10, 1964, by the bank. Except as in these findings indicated Gale did not participate in the sales negotiations.

(e) *Fourth Transaction*: On or about October 23, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 881 and thereby transferred one share to one Dick Bastian. His signature was guaranteed by Verl Haslem and he received $300 per share in cash. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(f) *Fifth Transaction*: On or about December 4, 1964, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 972 and thereby transferred one share of stock to Dick Bastian. He received $300 therefor and his signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations,

did not participate in the sales negotiations and received nothing from the transaction.

(g) *Sixth Transaction*: On or about January 4, 1965, he executed in blank the obverse of Ute Distribution Corporation Stock Certificate Number 1023 and thereby transferred one share to Dick Bastian for $300. His signature was guaranteed by Verl Haslem. Except as in these findings indicated Haslem made no representations, did not participate in the sales negotiations and received nothing from the transaction.

(h) *Additional Facts*: Although Mr. Curry had a number of transactions involving his Ute Distribution Corporation stock, he never actually had physical possession of the stock certificates. When he signed certificates he didn't know whether he read the warning thereon. He formerly had been prominent in tribal affairs. He knew the Ute Distribution Corporation owned minerals, lands and possibly future claim money that he had coming from the government. He understood his stock represented some share of the corporate property in a general way. He was in financial need when he sold his stock. He had received and sold stock in the two land corporations and was acquainted in a general way with the offering and posting requirements and with Public Law 617. [sic.]

10 STEWART EUGENE REED, M.B. Number 361, sold 10 shares.

(a) *Personal Background*: He was born July 21, 1940, and was placed under the Affiliated Ute Indian Trust Agreement by reason of the fact that he was a minor on August 27, 1961. He was released from the trust and the trust terminated with respect to him when he reached twenty-one years of

age, which was prior to the time he sold his stock. He attended high school until his junior year, after which he attended junior college in Carbon County for two semesters. He studied mechanics and body and fender work.

(b) *First Transaction*: On or about October, 1963, he sold five shares to one Clyde R. Murray for an automobile and $400. Five shares of the stock were offered for sale at the Uintah and Ouray Agency on September 4, 1963, at a price of $2,500, and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale, he executed two documents denominated "stock power" and "affidavit," respectively, which were guaranteed and notarized by John B. Gale. The Affidavit recited that he received $2,500. A certificate dated November 8, 1963, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except in these findings otherwise indicated, Gale and Haslem did not participate in the sales negotiations and received nothing from the transaction. The reasonable value of the automobile is not shown by the evidence except that Reed who had had auto mechanics training believed the car and cash approximated $2300.

(c) *Second Transaction*: On or about February 21, 1964, he sold five shares to one Wallace A. Davis for an automobile and $700 in cash. Five shares were offered for sale

at the Uintah and Ouray Agency on November 29, 1964, at a price of $2,500, and no acceptance thereof was received. The offering was completed on February 6, 1964. On the date of sale, he executed two instruments denominated "stock power" and "affidavit" which were guaranteed and notarized by Verl Haslem and both of which were complete at the time they were signed by him. The affidavit recited that he had received $2,500. A certificate dated February 26, 1964, was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offer had been complied with. On February 26, 1964, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on March 6, 1964, by the bank. Except as in these findings indicated Haslem did not participate in the sales negotiations and received nothing from the sale. There is no evidence that the car and cash received was of a value substantially less than $2,500.

(d) *Additional Facts*: In relation to the second sale, Mr. Davis wrote a check on the account of Davis Chevrolet Company at First Security Bank of Roosevelt, Utah, dated February 24, 1964, and payable to Stewart E. Reed in the sum of $2,500. Said check was endorsed by Mr. Reed and deposited to the account of Davis Chevrolet on which it was written. The transaction as represented by the check was sham. In relation to the first transaction, Murray went to First Security Bank in Roosevelt and obtained a check from Mr. Gale payable to Mr. Reed in the amount of $2,500, which was immediately endorsed and returned to Mr. Gale.

11. RICHARD H. CURRY, SR., M.B. Number 66, sold 10 shares.

(a) *Personal Background*: Mr. Curry was born January 18, 1927. He has six children. His Social Worker's File at the Uintah and Ouray Agency states in part: "We know that Mr. Curry has been rather irresponsible and has been a heavy drinker. . . . Nothing is known about his present employment. Mr. Curry has no cash assets on hand and is not expected to acquire any through sale of property since he has none assigned to him. We know from experience that we can expect no support from Mr. Curry for his children. It was thought that he should be placed under the supervision of the Trustee to conserve any assets which he might acquire for the benefit of the children. . . ." He has six minor children, three of whom (Richard Henry, Jr., Ralph E. and Regina L.) are minor mixed bloods who were placed under the Affiliated Ute Indian Trust. The file also indicates that Mr. Curry had eleven convictions for minor criminal offenses during the period of January 3, 1958, through July 1, 1959. Superintendent Zollar took no action relative to placing Mr. Curry on a trust or otherwise extending special protection to him in relation to his stock. Mr. Curry was once employed by the Duchesne County Sheriff. He is a veteran of World War II and the Korean War, attaining the rank of Sgt. in the armed forces. He is also a high school graduate and is a brother of Reginald Curry, administrative officer for the Ute Indian Tribe.

(b) *First Transaction*: On or about November 6, 1963, he sold five shares to one Clyde R. Murray for $500 per share. The stock was offered for sale with the Uintah and Ouray Agency on September 13, 1963, at a price of $3,500 and no acceptance thereof was received. The offering was completed on November 4, 1963. On the date of sale Mr. Curry executed documents denominated "Stock Power" and "Affidavit," the

signature on the Stock Power being guaranteed by Mr. John B. Gale and the Affidavit being notarized by one Jerry Murray, the son of Clyde R. Murray. The Affidavit recited that he had received $3,500. On November 8, 1962, a certificate was signed by Superintendent Zollar and submitted to First Security Bank reciting that the law and regulations relative to the offering had been complied with. Before he sold this stock he shopped around to see how much he could get. He went to several people from whom he couldn't get more than $500 per share. On November 8, 1963, the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs sent a letter to the First Security Bank of Utah, in which he notified the bank that an affidavit signed by this plaintiff was on file at the agency office, reciting that the sum asked for the shares when offered for sale to the members of the tribe had been received for such stock. The stock was transferred to the new owner on November 14, 1963, by the bank. Except as in these findings otherwise indicated, Gale did not participate in the sales negotiations and received nothing from the transaction.

(c) *Second Transaction*: On or about September 2, 1964, he signed the obverse of Ute Distribution Corporation Stock Certificate No. 499, thereby transferring three shares to Richard Murray, his signature in this case not being guaranteed by anyone. He received $350 per share in cash. Five shares of stock had been offered for sale with the Uintah and Ouray Agency on June 9, 1964, at a price of $3,000, but no acceptance thereof was received. The offering was complete on August 10, 1964. On August 11, 1964, he executed an Assignment of all of the proceeds from his remaining Ute Distribution Corporation stock to Richard Murray, which was marked "paid in full September 6, 1964 Richard Murray." He signed his stock certificate after August 27, 1964, and the

stock was actually transferred by the Bank on September 10, 1964.

(d) *Third Transaction*: On or about September 14, 1964, he signed, in blank, the obverse of Ute Distribution Corporation Stock Certificate Number 896 thereby transferring his remaining two shares to one Gordon E. Harmston and Clara Mae Harmston with the signature guaranteed by Mr. John B. Gale. He had opportunity to read the warning on the certificate. He received $400 per share therefor in cash. These shares were also covered by the offer to sell referred to in relation to sale number two. The sale was after August 27, 1964. Excpt as in these findings otherwise indicated, Gale and Haslem had nothing to do with the sales transaction.

(e) *Additional Facts*: He does not recall whether he saw the front of the certificate. The evidence does not disclose whether he read the warning or not. Mrs. Logan noted the relationship between the transferee and notary in relation to the first sale, when the documents arrived at the Indian Agency Office.

12. CHARLES T. REED, M.B. Number 353, sold 10 shares.

(a) *Personal Background*: His Social Worker's File with the Uintah and Ouray Agency states in part: "Several years ago Mr. Reed was employed by the Bureau Branch of Law and Order. He was discharged because of his drinking. . . . In view of the family history, we believe that Mr. Reed should be placed under the supervision of a Trustee." The file also shows that on April 14, 1960, the Superintendent determined that Mr. Reed was in need of assistance in managing his affairs and was therefore placed under the Affiliated Ute Indian Trust administered by the Bank.

(b) *First Transaction:* On or about October 5, 1964, Mr. Reed signed, in blank, the obverse of Ute Distribution Corporation Stock Certificate No. 353 and sold the same to Mr. Richard Murray. The sale was transacted in Murray's garage at Roosevelt, Utah, and afterwards, his signature was guaranteed by John B. Gale. After the stock certificate was executed by him, the name of "The Benjamin T. Shaw Trust" of Dixon, Illinois, was inserted as the transferee. Reed does not know Shaw nor was he advised that his stock was being purchased for resale or the price at which it was to be resold. Mr. Reed received a 1947 Ford, a 1950 Buick and $300 in cash.

(c) *Additional Facts*: On September 17, 1964, the trust committee, consisting of seven bank officers, released Mr. Reed from the Affiliated Ute Indian Trust more than a year after he had requested that he be so released. An attorney employed by him wrote the Bank requesting his release from the trust and the release of his stock. First Security Bank did not conduct an investigation beyond a consideration of material submitted in support of Reed's request, including affidavits from Reed's employer and from the President of Ute Distribution Corporation attesting his competence. The purchase of his stock was consummated by Richard Murray October 5, 1964. In January, 1964, he had agreed to sell the stock to Murray who advanced him $40, but the stock was not actually transferred until October after the trust was terminated as to him. When he initially made his deal with Murray, he understood that he was only selling five shares, but when he endorsed the certificate it included ten shares and Reed thereafter attempted to protest to Murray who would not listen to him. The agreement between the parties was that Reed would receive, and he did receive, a Ford, a Buick and $300 for five shares. There is no express evidence as to the value of the cars but the preponderance of the circumstantial

evidence indicates that their value could not have been as much as $2,000. Gale guaranteed the signature in this transaction. Gale did not participate in the sales negotiations except as in the findings of fact found generally.

13. Unless otherwise expressly noted hereinabove, John B. Gale and Verl Haslem, in their indicated actions in carrying out, or in connection with, the sales described hereinabove,

(a) Were acting within the apparent scope of their employment and authority for First Security Bank; that while they had not been expressly directed or authorized by the Bank to purchase, or to participate in the purchase of said stock, they were authorized by the bank to collect notary public fees for the bank in connection with such transactions, to facilitate the transfer of said stock in aid of customers of the bank in acquiring said stock and to maintain deposits in said bank for the mutual benefit of the bank as a depository and of the customers as prospective purchasers to facilitate such acquisitions; to acquire for their own accounts or for customers said stock in recognition of their prestige as employees of the bank and through the utilization of bank facilities and with the knowledge that the owners would be likely to have confidence in negotiations participated in by bank employees under such circumstances; and the court finds that the bank had knowledge and notice of the activities of Gale and Haslem for their own benefit and for the benefit of others in the acquisition of said stock, and in its own supposed interest as well as in their interest continued to acquiesce in and to ratify such activities; and that the private directions to said employees from other agents of the bank that these activities should be conducted "on their own time" did not reasonably serve to alter the apparent authority established by the bank under the circumstances. The court further finds in this connection that by the bank's conduct, and through the use by

Gale and Haslem of bank facilities, it unavoidably led the plaintiffs to reasonably believe that it consented to and approved the conduct of its employees and placed said employees into a position more effectually to acquire, or to facilitate the acquisition by others, of said stock;

(b) Utilized secretaries, stationery, postage and other facilities of First Security Bank;

(c) Received, for and on behalf of First Security Bank, consideration for notarized "Affidavits" utilized in transferring plaintiffs' stock;

(d) Never inquired into the truthfulness, completeness or accuracy of each of the statements in said documents;

(e) Never administered an oath or affirmation when guaranteeing signatures or notarizing documents denominated "Affidavit," to which the said plaintiffs were signers;

(f) Never attempted in any manner to dissuade or discourage the sale or transfer of any Ute Distribution Corporation stock by any of the plaintiffs; and

(g) Never advised of any funds or deposits with or held by First Security Bank at its Roosevelt Office of Bernice Vannoy, Tillie Gyllstrom, Neal Phelps, The Carpenters, The Shaw Trust and others for purposes of acquiring Ute Distribution Corporation stock, or the price they, or either of them, had been authorized to pay for said stock, or that they were engaged in the purchase of Ute Distribution Corporation stock as agents for others or for resale or the price at which stock was being resold by them.

14. None of the designated plaintiffs ever had physical possession of or read the Ute Distribution Corporation stock certificates issued in their names, nor were the legends on the said stock certificates ever communicated to them.

15. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever saw or signed any of the Ute Distribution Corporation stock certificates issued in their name.

16. Neither the Bureau of Indian Affairs, the Uintah and Ouray Agency, nor any agent or employee of said Bureau or Agency ever attempted in any way to verify the truthfulness or accuracy of the "Affidavits" presented to said Bureau and Agency, nor to ascertain the circumstances or conditions surrounding the execution of said "Affidavits" or the consideration being paid or given for the related stock transfers.

17. Each of said "Affidavits" recited that the mixed blood affiant had received in cash the price for his Ute Distribution Corporation stock for which it had been posted by the Bureau of Indian Affairs, which, except as otherwise expressly noted hereinabove, was not true and was, unless otherwise expressly noted hereunder, known to the named notary to be untrue.

18. At all pertinent times, Messrs. Richard Murray, Clyde R. Murray, Earl Dillman, Richard Bastian, Lloyd Labrum and Wallace Davis were engaged in the business of selling new or used cars in the Uintah Basin Area of Utah, a fact at all pertinent times well known to Messrs. Gale, Haslem and Adelyn H. Logan, Realty Officer, Uintah and Ouray Agency, Bureau of Indian Affairs.

19. Unless otherwise expressly noted hereinabove, none of the designated plaintiffs ever read the statements printed as legends on the stock certificates either on the certificate or any other document, nor did any officer, agent, or employee of First Security Bank, including defendants Gale and Haslem, undertake to explain to plaintiffs at the time of sale or any other time, the true nature of their stock or its probable value, or to discourage its sale.

PART III
GENERAL FINDINGS

A. Relating to Plaintiffs' Claims Against The United States of America.

1. No employee or agent of the United States or any person or organization acting pursuant to the authorization of the United States ever undertook or performed any appraisal or evaluation of the mineral assets of the Ute Indian Tribe, of the Uintah and Ouray Reservation, Utah.

2. The Manual of the Bureau of Indian Affairs, as in use in 1963 and 1964, a copy of which said Manual was at all times retained at the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, contained express provisions to be followed in appraising Indian lands. (Only one small section pertains to appraisals of mineral values, and is limited to cases when total value of land is being appraised. The Plan for Distribution, Exhibit U-A, specifically exempts appraisal of mineral rights in connection with the division of Tribal assets where land values are involved.)

3. At some time after the sales of Ute Distribution Corporation stock commenced, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, requested that the geological survey of the United States make funds available for the purpose of appraising the assets which were jointly administered by Ute Distribution Corporation and the Ute Indian Tribe. In response to said request, Mr. Curry was informally advised that such appraisal would not be made because it would be costly and the United States did not desire to divert the personnel from other projects.

4. On October 15, 1964, the Bureau of Indian Affairs' Area Director requested that the Superintendent of the Uintah

and Ouray Agency give his observations as to the value of the shares sold. In response to this request, within the short space of eight days, the Superintendent reported the following facts:

(a) That Ute Distribution Corporation had received its share of all oil and gas revenues of approximately $2,245,300 from Tribal lands or about $610,000 from that source which, had it all been distributed to its members, would have amounted to $1,245 each for the three years involved. (This information covered a period of over three years, during which some eight per capita payments were distributed to stockholders. The information must have been known to that degree.)

(b) That because of the Tribe's rejection of bids at three recent oil and gas sales, against the recommendation of the oil and gas supervisor and himself, that immediate revenue in the amount of $442,760 had not materialized but that bids accepted in two recent sales would mean an immediate income of $641,645 upon approval of the leases;

(c) That there were approximately 185,000 acres out of a total of 1,236,000 acres out of which minerals were owned that would be under lease for oil and gas by the end of 1964, and that annual rental from that source would total over $231,000.

(d) That there was one unliquidated claim against the United States of approximately $8,000,000 as to which Ute Distribution Corporation would receive its share and that there were three remaining small claims not finally adjudicated which might total about $1,750,000 when finally settled.

None of such information as far as the record discloses was communicated to the designated plaintiffs by the Superintendent.

5. No appraisal of the mineral estate of the Uintah and Ouray Indian Reservation was ever undertaken by the Bureau of Indian Affairs for the reason, according to Mrs. Logan, Realty Officer of the Uintah and Ouray Agency, that such an appraisal would be much more difficult than the prior appraisals of the surface estates conveyed to Antelope Sheep Range Company and Rock Creek Cattle Range Company by the Bureau of Indian Affairs.

6. In 1958 the Bureau of Indian Affairs, acting in cooperation with the Ute Indian Tribe, did undertake the appraisal of the assets represented by the capital stock of the two related corporations, Rock Creek Cattle Range Company and the Antelope Sheep Range Company, in connection with the division of assets between the Tribe and the mixed-bloods. Subsequent to said appraisal over 90 per cent of the members of the "mixed-blood" group, including all of the plaintiffs herein, sold their stock in said Corporations to the Ute Indian Tribe prior to August 27, 1961, which captial stock was purchased in all instances by the Ute Indian Tribe for $550 per share. The primary purpose of the appraisals on the two land corporations was to carry out the division of assets found in Public Law 671. These surface appraisals were later used by the Tribe in determining what they should pay for the range stocks. The appraisals were not made for the purposes of fixing the value of the stock at the time of its sale to the Tribe.

7. At all times pertinent to the claims of the plaintiffs herein, the Bureau of Indian Affairs was aware of the fact that Ute Distribution Corporation stock was of substantial value, and that tribal claims of substantial value were in the process of compromise and that oil, gas and other useful minerals were known to exist on the Uintah and Ouray Reservation and the Bureau so advised Congress during the Summer of 1961. The Bureau of Indian Affairs did not, however, undertake particu-

larly to advise the designated plaintiffs of those facts except as hereinabove found.

8. As to each sale of plaintiffs' stock, defendant United States of America, performed the following steps prior to August 27, 1964:

(a) Received an "Offer to Sell" which was prepared and signed by the mixed-blood Indian on forms supplied by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs. The "Offer to Sell" specified a sum in cash which would be accepted for the mixed-blood Indian's Ute Distribution Corporation stock.

(b) Posted said "Offer to Sell" at various public places in Uintah and Duchesne Counties, Utah.

(c) Advised the mixed-blood Indians that no offer to purchase had been received pursuant to the terms of the "Offer to Sell" and that said stock could be sold within a period of six months thereafter to any person at the same or greater price and on the same terms and conditions upon which it had been offered.

(d) Received signed documents denominated "stock power" and "affidavit," respectively, both of which were executed by the mixed-blood Indian and were delivered to the Agency on occasions by a non-Indian, and came in the mail on other occasions.

(e) Executed a "Certificate" to the effect that the shares had been properly offered at a price specified in the certificate to members of the Ute Indian Tribe in accordance with the law and regulations, which said Certificate was transmitted directly to defendant First Security Bank of Utah, N.A., and never furnished to the purchaser directly or stamped on the stock certificate, and which said Certificate was pre-

pared by Adelyn H. Logan, Realty Officer, and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah.

(f) By letter on the letterhead of the Uintah and Ouray Agency, advised First Security Bank that an affidavit had been signed by each of the sellers and was on file in the office, which said letter was prepared by Adelyn H. Logan, Realty Officer and executed by the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

9. None of the Offers to Sell filed by or on behalf of the "mixed-blood" stockholders of Ute Distribution Corporation ever specified any consideration except cash. Each of the Affidavits signed by the 12 designated plaintiffs indicated that cash had been received for the stock.

10. Although the Articles of Incorporation of Ute Distribution Corporation, which had been approved by the Secretary of the Interior as aforesaid, expressly provided in Article VIII that unless the endorsement of the Superintendent of the Uintah and Ouray Agency be endorsed on the stock certificate, the transfer would be invalid, and the stock certificate bore express warnings and notice of restrictions on transferrability thereon, a substitution to this requirement was made upon agreement between the Bank and the Government. It was agreed that a separate certificate would be prepared and mailed to the Bank, rather than the requirement of the endorsement on the back of the certificate itself by the Superintendent. This was done to expedite the procedure and for the convenience of the Bank. The Superintendent's certificate was subsequently attached to the stock certificate by the Bank.

11. In no instance did the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, actually certify on the actual stock certificate that the

laws and regulations had been complied with, nor was any "mixed-blood" Indian stockholder, in selling his Ute Distribution Corporation stock, ever permitted, prior to August 27, 1964, to examine or read his Ute Distribution Corporation certificates and the legends thereon or to endorse his signature on the assignment form printed thereon.

12. Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, was advised by the Area Office of the Bureau of Indian Affairs on July 18, 1963, that "the law requires that the shares be advertised so that the Ute Tribe may have an opportunity to purchase them if they wish. It is felt that sales of stock should be advertised once every three months so that we will comply with the law and also offer a service to the people wishing to sell their shares. This will be a burden on the staff, but we should offer every opportunity for the people owning the shares to secure the best price possible and still fit the advertising in with our workload."

13. The United States Department of the Interior advised Congress on October 13, 1961, and in the various reports of the Commissioner of Indian Affairs, that "a mixed-blood Ute can sell his stock in the Ute Distribution Corporation if he wishes to do so, and the pending Bill [amendment to 25 U.S.C. § 677] will make no change in the law in that respect. The mixed-bloods have been pretty well convinced, however, by an educational campaign that they should not sell their stock because it represents their undivided interest in the minerals and claims, the value of which is uncertain. Valuable minerals are known to exist, but their value could fluctuate over a wide range." The Bureau of Indian Affairs undertook no educational campaign among the mixed-bloods to discourage the sale of their stock but was aware of intermittent efforts by others with this in view.

14. A meeting of the Board of Directors of Ute Distribution Corporation was held at Fort Duchesne, Utah, on September 10, 1963, and was attended by Bert Narcho, Acting Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs, and Adelyn H. Logan, Realty Officer of the Agency. At said meeting, it was suggested since many of the stockholders lived off the Reservation and knew nothing about the Offers to Sell, that individual notice to each concerning Offers to Sell should be sent to enable them to purchase the offered stock. Mrs. Logan stated that the duty of the United States was only to notify the Corporation of proposed sales and that maybe the Board of Directors should do this, because the Government did not have the funds available to set up a clerk's job to do this work as it would take a full-time job to handle this work. Discussion was had on the efforts of the Board to obtain an "open end" loan from First Security Bank to purchase Ute Distribution Corporation shares being offered for sale. Mrs. Logan informed the Board that a major oil company had contacted her and asked for information on how to buy Ute Distribution Corporation stock being offered for sale. She informed them that the advertisements on Offers to Sell were to members of the Tribe only. At said meeting the Board was told that Offers to Sell were to be put in conspicuous places, viz., the U.S. Post Offices in Myton, Randlett, Fort Duchesne, Whiterocks and Duchesne.

Discussion was had on second-hand cars, old models, or any other consideration except cash not being acceptable. The Board was told that the selling stockholder must furnish the Superintendent a signed affidavit certifying that he has received the full amount as offered. Discussion was had on the sale of one Elizabeth Bumgarner who sold her ten shares to Dick E. Bastian of Roosevelt, Utah, who furnished the Superintendent an affidavit that she had received $5,000, said affidavit notarized by one Earl Dillman. At said time,

Mrs. Logan knew Messrs. Bastian and Dillman had interests in a car business in Roosevelt. Mrs. Logan informed the Directors that she had 29 correct Offer to Sell applications signed and ready to be advertised and she estimated that she would have 40 offers by the first of October and that it would take $99,000 to purchase all of the offered shares.

15. In 1963 and 1964, it was common knowledge in the Uintah Basis area of Utah, including the towns of Roosevelt, Duchesne and Ft. Duchesne, that the "mixed-bloods" were accepting used cars for their Ute Distribution Corporation stock.

16. Mrs. Adelyn H. Logan, Realty Officer and Mr. M. M. Zollar, Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, knew during the late summer and fall of 1963 that "mixed-blood" Indians were receiving automobiles or other chattels in exchange for their stock rather than the cash consideration stipulated in the "Offer to Sell."

17. Mrs. Adelyn H. Logan, the Realty Officer of the Uintah and Ouray Agency, Bureau of Indian Affairs, Ft. Duchesne, Utah, who was the government official charged with responsibility for the examination of said affidavits, among other things, noted various irregularities, or "bad business practices" appearing on the face of many of the affidavits but pursuant to instructions from Superintendent Zollar, did nothing beyond noting such irregularities and checking the affidavits to see if they were complete and to see if the amount stated therein by the mixed-blood seller was equal to or more than the amout of his original offer to sell. If so the affidavits were accepted at their face value without further effort being made to determine the regularity of the reported sales. Such defects included the following: erasures, documents notarized by the transferee or a member of his immediate family, names

on the notary seal which differed from the name of the purported notary, operative words of the affidavit including the amount of consideration in different handwriting or different colors of ink appearing to have been added after the document had been signed, and other similar irregularities.

18. The knowledge o fthe United States concerning irregularities in sales procedure is further evident in a Memorandum dated April 23, 1965, prepared by Adelyn H. Logan, Realty Officer of the Uintah and Ouray Indian Agency, in which she advised the Superintendent that "in our involvement with our offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities, indicating that an advantage was being taken of some of the sellers. Since, however, the seller furnished us with an affidavit or certiifed statement to the effect that he had received from the named non-Indian buyer the price he had asked, we did not feel it our responsibility to pursue the matter further." Mrs. Logan further indicated in said Memorandum that, "whether there is a responsibility on the part of the Bureau, now, to present evidence that it has which might be of assistance to the plaintiffs in the case is a matter to be decided. From the standpoint that we are perhaps quite aware of numerous instances in past years where the Indian people and their interest have been exploited by non-Indians, even though in this case the mixed-blood plaintiffs were actually terminated of Bureau supervision and jurisdiction on August 27, 1961, perhaps there is an obligation to become involved." Mrs. Logan was referring to the request by plaintiffs' attorney for assistance in prosecuting their claims against the first defendants named in this action. This was prior to the time the United States was joined as a party.

19. As early as March 19, 1963, the United States Department of the Interior reecived correspondence from Congressman Samuel M. Friedel, writing on behalf of a "mixed-blood" and complaining that there were certain irregularities in relation to the sale of Ute Distribution Corporation stock. On August 26, 1963, the United States Department of the Interior received a letter from Senator Frank E. Moss of Utah concerning the sales procedure, after both Senators Moss and Bennett of Utah were presented with complaints by an Indian relative to these matters.

20. On November 6, 1963, the Superintendent of the Uintah and Ouray Agency and Mrs. Logan received and read a letter from one R. O. Curry, Director of Resources of the Ute Indian Tribe. The letter read in part:

> "I understand that the regulations pertaining to the sale of these [i.e., Ute Distribution Corporation] stock after they have once been offered to the Tribe and members of the Tribe is that they can be sold to any person desiring to purchase them but at not less than the price offered and this is the part that concerns me most. I understand that some of the people have agreed to take automobiles as part payment on the stock. It would seem that the acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. For instance with the receipt of an automobile which costs the dealer $2,000, and his markup of at least $1,000 or $1,100—the seller of the shares would receive approximately $4,000 in value instead of $5,000 if he had offered for $5,000. I was wondering if the regulations could be construed to require the seller to receive only cash instead of equipment and chattels as they may pass hands in some instances. I wondered if this might be discussed with our attorney or your Field Solicitor to see if the receipt of chattels is a violation of the sale agreement as I am sure that some of the sellers may be taken advantage

of by automobile salesmen who are anxious to obtain some of these shares of stock and at the same time effect the sale of an automobile."

Neither the Superintendent nor the Realty Officer ever answered or otherwise responded to this letter until upon a telephone call from Mr. Curry, Mrs. Logan gave him the substance of the note next following: Mrs. Logan wrote in the margin of the letter:

> "Note for Files. This memo was discussed with Mr. Z. [Superintendent Zollar], but he did not think the points raised should be a further concern of ours since the members have been terminated; the stock is unrestricted, and they are therefore free to do whatever they wish as long as the Bureau complies with CFR 243 which we still do til 8-27-64."

21. On November 5, 1963, when he received the aforesaid letter from Mr. R. O. Curry, Superintendent Zollar, acting for the Secretary of the Interior, adopted the position that he would not interfere with the sales because he had no responsibility to do so after August 27, 1961.

22. The immediate determination as to whether the individual "mixed-blood" was competent to manage his own affairs and whether the individual "mixed-blood" should be placed under the express provisions of the Affiliated Ute Indian Trust Agreement was made by the Superintendent of the Uintah and Ouray Reservation.

23. On November 7, 1963, Mr. R. O. Curry, Director of Resources for the Ute Indian Tribe, addressed a form letter to all persons who had, at that time, offered their stock for sale, in which he pointed out that "a sale for cash is much more desirable than accepting equipment or an automobile on

the purchase Price" and that if the stockholder had not already committed his stock to someone, "it might be to your advantage to wait until after the 12th of November to see what the Tribe might have in mind." Thereafter, the Tribe did not purchase any shares of stock at all. No decision was made on this question because the members of the Business Committee were not in agreement as to whether the stock should be purchased or not. The Tribe did not know how much the stock was worth and had no money in their budget at that particular time for the purchase of the stock. The Tribal Business Committee did know that there were unadjudicated claims against the Government and that there was oil and gas on the Reservation. They also knew that there was asphalt, gilsonite and coal on the Reservation. In the absence of any appraisal, the significance of this knowledge was minimized, but the Business Committee knew that the stock was of substantial value.

24. Plaintiffs originally brought this action against the bank, Gale, Haslem and other individuals on February 17, 1965. After various proceedings were had, the complaint was amended by a Second Amended Complaint on February 11, 1966, on which latter date the United States of America for the first time was made a party defendant. The United States did not fraudulently or otherwise conceal or secrete from the plaintiffs the existence of any cause of action or claim against the United States, and the running of the statute of limitations in favor of the United States was not thereby tolled. The designated plaintiffs did not in fact realize, discover or believe that they had a claim against the United States until within two years of the joinder of the United States as a defendant in this action. The named plaintiffs were in need of counsel, advice and assistance looking to the retention of their stock interests which the United States

through its Bureau of Indian Affairs was peculiarly in a position to extend within the limitations established by law and regulations.

25. Prior to the adoption of Public Law 671 and the organization of the Ute Distribution Corporation, the Bureau of Indian Affairs was aware that in the past the Ute Indians had been sold useless or inappropriate chattels including, in particular, automobiles which were overvalued or not necessary or appropritae for the purposes of the buyers.

26. Prior to the adoption of Public Law 671, the Bureau of Indian Affairs was aware that an appraisal of the mineral assets of the Ute Indian Tribe would be desirable in order to protect the interests of the mixed-blood Ute Indian with respect thereto and in connection with the evaluation and sale of their Ute Distribution stock. Representatives of the Bureau, at hearings at Fort Duchesne, Utah, prior to the adoption of Public Law 671, inferred to the members of the Tribe, that such an appraisal would thereafter be undertaken.

B. Relating to Plaintiff's Claims Against First Security Bank, John B. Gale and Verl Haslem.

1. At all times pertinent to the claims of defendants herein, Mr. Ralph D. Cowan was vice president and trust officer of First Security Bank of Utah, N.A. Mr. C. Tab George was assistant trust officer of First Security Bank of Utah from August, 1963, to March 14, 1964. At all material times, Mr. George W. Bateman was a vice president of First Security Bank.

2. At all times pertinent to the claims of plaintiffs herein, defendant John B. Gale was (a) an elected Justice of the

Peace; (b) handled most notarizations of affidavits and guaranteed most of the signatures on the stock powers and certificates. He guaranteed the signatures as an agent of First Security. Most of the stock transfer functions were handled by bank personnel located in the trust office in Salt Lake City; (c) was authorized by the bank to extend loans up to $500 without the approval of any other bank officer, and was in charge of the Timeway Loan Department of the Roosevelt Branch; (d) was authorized by the bank to issue and execute cashier's checks on the bank up to $2,500 without prior approval of any other bank officer; (e) was authorized by the bank to notarize documents and to charge and collect for the bank fees for said service; (f) had full access to all loan records of any of the plaintiffs having loans with the bank and to any financial records maintained by the bank in connection therewith; (g) had full access to duplicate transfer records of Ute Distribution Corporation which contained the name of the transferor, dates of transfer, number of shares transferred, name and address of transferee, and the number of shares, if any, retained by the transferee.

3. At all times pertinent to the claims of plaintiffs herein, defendant Verl Haslem was (a) authorized by the Bank to notarize documents and to charge and collect for the bank, fees for said service; (b) had full access to available financial records and loan records of any of the plaintiffs having loans with the bank; (c) had full access to duplicate transfer records of Ute Distribution Corporation which contained the name of the transferor, date of transfer, the number of shares transferred, the name and address of the transferee, and the number of shares, if any, retained by the transferor.

4. At all times pertinent to plaintiffs' claims, defendant First Security Bank of Utah, N.A., had in its possession copies of the Articles of Incorporation of Ute Distribution Corpora-

tion, the Regulations promulgated by the Secretary of the Interior relating to Ute Distribution Corporation and the stock certificates of Ute Distribution Corporation owned by the mixed blood Ute Indian stockholders, and by virtue of such possession, and the execution of the aforesaid business agent agreement and trust agreement, was chargeable with notice of the contents of the said Articles of Incorporation and charged with responsibility.

5. First Security Bank assumed the duty of a transfer agent in connection with all Ute Distribution Corporation stock transfers. It represented to the Executive Director of the Affiliated Ute Citizens ("mixed-bloods"), that upon execution of the stock transfer agreement, "it would be our [i.e., the bank's] duty to see that these transfers were properly made." It was further represented that the Roosevelt Office of the Bank would perform a function in relation to the presentation of certificates for transfer and in relation to the stockholder who did not live in the area of Roosevelt, and that "the Corporation would not be involved in this, as the Bank would be acting for the individual stockholders."

6. After delivery to First Security Bank of the Ute Distribution Corporation stock certificates, execution of the business agent and trust agreements and receipt of a certain letter from attorney John S. Boyden for and on behalf of the Ute Distribution Corporation, discussed hereinunder, the Bank indicated that it considered that it held the certificates belonging to the beneficiaries of the trust pursuant to Article V of the Trust Agreement; but there was no agreement, understanding or indication that the bank held pursuant to and bound by said trust agreement the certificates of others not specifically designated as beneficiaries under said Trust Agreement.

7. Three additional "mixed-bloods" were added to "Schedule A" to the Trust Agreement of July 26, 1960, as named beneficiaries and bound by the provisions thereof, by letter from the Superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs from time to time after execution of the said Agreement. Only one of the designated plaintiffs, Charles T. Reed, was added, then removed, before his stock was transferred.

8. Mr. John S. Boyden, as attorney for Ute Distribution Corporation, on July 22, 1959, advised First Security Bank, as follows:

(a) That the Ute Distribution Corporation had adopted the following resolution: "The Board of directors by unanimous vote direct their attorney, John S. Boyden, to write a letter to the First Security Bank of Utah, N.A., asking said Bank, as transfer agent, to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to the said stockholders the importance of retaining said stock."

(b) That the Bank was to "impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock," and that such stock "represents their distributive share" of the mineral interests in the reservation and the proceeds of judgments against the United States.

(c) That the Bank was to discourage the mortgaging, pledging or in any way jeopardizing the ownership of Ute Distribution Corporation stock because such practices "may result in very unfair practices."

9. In said letter dated July 22, 1959, attorney John S. Boyden further instructed First Security Bank that the stock

of Ute Distribution Corporation was not to be delivered to its stockholders, but was to be retained by First Security Bank. This procedure was to be followed, according to Mr. Boyden, because of some rather unfavorable experiences which the Indian service had had with the loss by Indians of valuable instruments.

10. Trust officers of First Security Bank at its Main Office in Salt Lake City, Utah, received the said letter from Mr. Boyden and gave no notice to him or to the tribe that it would not follow the advice therein given. No stock was sold by plaintiffs until several years after the Boyden letter. The Bank did in fact retain possession of the stock certificates pursuant to Mr. Boyden's advice.

11. Prior to actual drafting of the Trust Agreement, the trust business arising from Public Law 671 was actively solicited by the president of First Security Corporation, who indictaed the Bank's strong desire to obtain it for commercial reasons, and by the vice president of the Bank who wrote to Mr. A. H. Harris, Executive Director of the Affiliated Ute Citizens, on January 16, 1958, and represented that First Security Bank would act as "trustee for trusts established by individuals who are not minors or incompetents."

12. Prior to August 27, 1967, no First Security Bank agent consummated the transfer of any designated plaintiffs' stock until he had signed an "affidavit" declaring that he had received the advertised value for the stock. The letter of September 23, 1963, from the Bank's trust officer Cowan inaugurated this "affidavit" system:

> "In the event the offer to sell is not accepted by a member of the tribe within the time permitted by the regulations, then it would appear the following procedure should be followed:

"1. The stockholder offering this stock for sale will be notified by the Agency that his offer has not been accepted by a member of the Tribe and that he is free to sell his stock at a price not less than that indicated in his offer to sell.

"2. When he has found a buyer he will furnish the Superintendent with evidence satisfactory to the Superintendent that a sale has been made at a price not less than that indicated in the offer to sell, and will deposit with the Superintendent a stock power assigning the shares sold to the purchaser."

The "affidavit" was adopted to be the "evidence satisfactory to the superintendent."

13. By an agreement made and entered into July 26, 1960, entitled "Affiliated Ute Indian Trust Agreement" First Security Bank became a Trustee as to certain named "mixed-bloods" who were either minors or determined by the United States to be non compos mentis or in need of assistance in managing their affairs including in particular, Stewart Eugene Reed, who was a minor and Charles T. Reed, who was determined to be in need of assistance, and both of whom are designated plaintiffs herein. Neither of those plaintiffs was under the trust at the time he sold his stock. Stewart Eugene had become an adult and the trust had by its terms automatically terminated as to him. Charles T. was released from the trust by the trust committee, and such action was not shown to have been arbitrary or capricious. The Bank trust committee, by the terms of the contract had the power to terminate it as to any adult beneficiary.

14. On or about February 13, 1964, Mr. Gale was informed by the President of Ute Distribution Corporation that no more certificates would be signed until the selling stock-

holder had received his money as advertised. On or about said date, Mr. Gale informed the President of Ute Distribution Corporation that the procedure being followed by First Security Bank required the buyer of Ute Distribution Corporation stock to deposit with the Bank the full purchase price which the Bank paid over to the seller when the stock certificates are signed. This statment by Mr. Gale to the President of Ute Distribution Corporation was not true.

15. In correspondence between the Salt Lake City branch of First Security Bank and its Roosevelt office, prior to August 27, 1964, First Security Bank required that all Ute Distribution Corporation stock certificates reissued in the name of a "mixed-blood" be returned to the Main Office of the Bank and retained in its files until August 27, 1964, whereas stock certificates issued or reissued to non-"mixed-bloods" were delivered to the stockholder.

16. First Security Bank took the position, at all times prior to August 27, 1964, that it was entitled to keep and retain the Ute Distribution Corporation stock certificate owned by all of the "mixed-bloods" and did so until they were transferred or until after August 27, 1964. The proof is insufficient to show that this in and of itself was the direct cause of damage in any particular case and the evidence indicates that the retention system was established in good faith for convenience and in the supposed interest of the Indians; but it did minimize the dissemination of warnings against the disposal of stock and encourage acquisitions of stock from half-bloods without the warnings being impressed upon them.

17. Ute Distribution Corporation was interested in purchasing and attempted to purchase its shares of stock which had been offered for sale. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City,

Utah, on September 6, 1963, and was attended by Messrs. Cowan, George and Bateman. The purpose of the meeting was to discuss a group loan to enable the purchase of Ute Distribution Corporaiton stock shares being posted for sale. Discussion on such a loan was held. The Bank representatives advised that Ute Distribution Corporation stock certificates would not be deemed sufficient collateral for such a loan. Such a loan was never made by First Security Bank. It was agreed that the Ute Distribution Corporation stock certificates of all "mixed-blood" members were to be retained by the First Security Bank until August 27, 1964.

18. First Security Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States prior to the time when the identity of the transferee was known, but no transfer was made until the affidavit disclosed the consideration the Indian claimed he had received.

19. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on November 14, 1963, and was attended by Mr. Cowan. It was determined at the said meeting the responsibility for determining that the affidavits being signed by the "mixed-blood" members relating to their Ute Distribution Corporation stock was upon the Superintendent. Discussion was had on the sale by "mixed-blood" members of their Ute Distribution Corporation stock for used cars. The assignment of the Ute Distribution Corporation stock of Leonard Richard Burson to First Security Bank for a loan was discussed.

20. A meeting for the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on

February 7, 1964, and was attended by Mr. Anderson and Mr. Tab George, officials of First Security Bank in Salt Lake City. Discussion was had on the subject of Mrs. Anita Reyos having signed an affidavit in blank that she had received cash for her Ute Distribution Corporation stock, that she had not received said cash and her statement that said affidavit had been signed by her on December 23, 1963, but had been notarized November 11, 1963, and that the check had been made payable to Dick Bastian and the Bank.

21. A meeting of the Board of Directors of Ute Distribution Corporation was held at Salt Lake City, Utah, on April 25, 1964, and was attended by Mr. Cowan and Mr. Leon Olsen, a trust officer of First Security Bank. A letter of one Samuel W. Bumgarner was read. Said letter made complaint about the sale by Mr. Bumgarner to one Earl Dillman of his Ute Distribution Corporation stock that Mr. Bumgarner had not received the balance owed him on his stock.

22. The Bank prescribed the manner in which the stock powers were to be executed in a letter to Superintendent Zollar dated October 19, 1960, and specifically authorized the execution of stock powers and the acceptance of such powers by the United States prior to the time when the identity of the transferee was known and when the exact amount of consideration was as yet undetermined, but no transfer was completed until an affidavit was furnished specifying a consideration.

23. The Bank established the procedure to be followed in all sales of Ute Distribution stock in a letter dated September 23, 1963, copies of which were submitted to Superintendent Zollar. Significant portions of these instructions include the following:

(a) It was provided that if a member of the Tribe determined to make a purchase pursuant to the offer to sell, he

must make a deposit of at least 10 per cent of the purchase price and pay the balance within 30 days and that such payments were to be made through the Indian Agency.

(b) It was provided that a "stock power" in a form which was supplied by the Bank should be executed in lieu of the endorsement of the stock certificate.

(c) Reissued stock certificates were to be forwarded to the Roosevelt office of the First Security Bank for final execution.

(d) In the event a member of the Tribe did not determine to purchase, it was stipulated that after the selling stockholder had found a buyer, he would "furnish the Superintendent with evidence satisfactory to the Superintendent" that a sale had been made at a price not less than that indicated in the offer.

(e) The Superintendent was to forward to First Security Bank the stock power together with his certificate to the effect that the offering requirements and the law and regulations had been complied with.

24. The sale and transfer procedure pertaining to Ute Distribution Corporation stock established by First Security Bank was a deviation from the precise procedure (a) specified in the Articles of Incorporation of Ute Distribution Corporation, (b) imprinted upon the stock certificates, and (c) contained in Public Law 671 and the regulations thereunder, in the following particulars:

(a) In that a stock power was accepted in lieu of the endorsement of the assignment imprinted on the obverse of the stock certificate.

(b) In that the selling stockholder, rather than the purchaser or the Superintendent, was required to furnish evidence that the law and regulations had been complied with.

(c) In that the Certifictae of the Superintendent that the law and regulations had been complied with was supplied to the Bank, rather than to the purchaser.

First Security Bank was at all times material to plaintiffs' claims herein, aware of the requirements of the Articles of Incorporation of Ute Distribution Corporation of the law and regulations and knowingly permitted or acquiesced in the above enumerated deviations because it had determined that it was inconvenient for the Bank to follow the precise procedure prescribed in the Articles and Regulations and it appeared that the procedure utilized was in substantial compliance and agreeable to the officers of the Ute Distribution Corporation.

25. First Security Bank of Utah, at various times prior to August 27, 1964, was aware that various provisions of the law and regulations relative to the transfers of stock were being circumvented, but failed to take any action with respect thereto. Such irregularities included the following:

(a) Documents of transfer indicated that assignments of stock were being taken, and part consideration paid therefor, prior to the time when the posting or advertising requirements of law had been complied with.

(b) Stock certificates of Indians containing undated endorsements were accepted for transfer after August 27, 1964, without determining if the transfer was in fact prior to August 27, 1964, and a prior offer to the members of the Ute Indian Tribe a prerequisite therefor.

(c) Documents of transfer were accepted on the stationery of automobile dealers, or under other circumstances, indicating that the "mixed-blood" Indian was receiving consideration other than cash.

(d) In various instances the Bank received documents indicating that the Indian was, in fact, receiving an automobile rather than the cash recited in his Affidavit.

(e) Bank official purposely held stock certificates until after August 27, 1964, so as to avoid the advertising requirements and advised prospective purchasers to delay making any transactions until after that date for the purpose of avoiding the requirements and restrictions of the law.

26. At all times pertinent to plaintiffs' claims herein, First Security Bank required that an official at its Roosevelt office, or some other bank, guarantee the signature of the selling stockholder as distinguished from the mere witness of the signature. In situations where the signature was merely witnessed by a bank official, the certificate was returned and transfer refused until such time as a signature guarantee had been obtained.

27. At all times pertinent to plaintiffs' claims herein, First Security Bank was fully aware that the acts of Mr. Gale and Mr. Haslem in guaranteeing the signature of "mixed-bloods" on stock powers, relating to Ute Distribution Corporation stock imposed liabilities and responsibilities upon the Bank which the law imposes on guarantors of signatures.

28. Reports of financial and other business transactions effected at the Roosevelt Branch of the First Security Bank were transmitted daily and monthly by the Branch to the Bank's Main Office in Salt Lake City, Utah.

29. First Security accepted stock transfers by non-Indians prior to August 27, 1964, only if its records indicated that the requirements of Public Law 671 and the regulations had previously been complied with by the original Indian owner, in which event the Bank accepted transfers by non-Indians without evidence of posting and unaccepted offers.

30. By reason of the said Agreement of December 31, 1958, the said Affiliated Ute Indian Trust Agreement of July 26, 1960, the said Boyden letter of July 22, 1959, and the implementation of the said agreements and instructions by First Security Bank, said Bank and its agents including Mr. Gale and Mr. Haslem came into possession of inside information about Ute Distribution Corporation, its bank deposits, its cash distributions to stockholders, pending receipts, and its assets, and of personal and confidential information and financial records of "mixed-blood" stockholder of Ute Distribution Corporation beyond that generally available to the plaintiffs.

31. By reason of the said Agreement of December 31, 1958, the Boyden letter of July 22, 1959, and the instructions therein and the acceptance thereof by the Bank, and the knowledge and information obtained by the Bank thereunder, the Bank's possession of and knowledge of the contents of the Articles of Incorporation and stock certificates of Ute Distribution Corporation, the Affiliated Ute Indian Trust Agreement of July 26, 1960, the representations of Bank officers as to the scope and purpose thereof, and the information obtained by the Bank thereunder, the functions and responsibilities it had and assumed in relation to the stock of the Ute Distribution Corporation and the transfer thereof, and the trust and confidence naturally and reasonably imposed in it under all of the circumstances in evidence by the mixed-bloods, First Security Bank and its agents, including Mr. Gale and Mr. Haslem were at all times pertinent to plaintiffs' claims

fiduciaries in the sense that they occupied a position of trust and confidence with reference to the Ute Distribution Corporation and each of the "mixed-blood" stockholders of Ute Distribution Corporation.

32. Gale and Haslem received various fees, commissions, bonuses, tips, or gratuities from non-Indians for their services in facilitating the transfer of the Ute Distribution Corporation stock from "mixed-blood" Indians to non-Indians and on at least one occasion an employee in the Salt Lake Office of the Bank received a small gratuity for facilitating such a transfer.

33. At all times pertinent to the claims of plaintiffs herein, defendants John B. Gale and Verl Haslem were regularly engaged in the act, practice, and course of business of purchasing, both as principal and as agent for undisclosed principals out of the State of Utah, capital stock of Ute Distribution Corporation from "mixed-blood" stockholders. Mr. Gale worked with Mr. Richard Murray who made contact with the "mixed-blood" stockholder and arranged the purchase terms, and Mr. Gale would provide the funds, either before actual sale as "advances" to the "mixed-blood" stockholder, or at the time of the signing of various documents before Mr. Gale.

On a number of such transactions where Mr. Gale and Mr. Murray worked together Mr. Gale would pay Mr. Murray, in cash, one half of the profits or commissions realized by Mr. Gale therefrom. In a number of such instances, Mr. Murray actually paid the "mixed-blood" for his stock in whole or part by an equity in a used automobile, which said fact was well known to Mr. Gale. Mr. Gale deposited with or held at First Security Bank, Roosevelt office, funds for various non-Indian out-of-state buyers, including Phelps, Carpenter, Vannoy, Shaw Trust, and others. The fact of such funds being so held, the amounts thereof, the names of any of such persons

or the prices they were willing to pay, were never, at any time, disclosed to any of the "mixed-blood" stockholders of Ute Distribution Corporation.

Mr. Gale also worked with one Elmo Matthews, one Mills Tooke, and one John Benson, who located out-of-state buyers of Ute Distribution Corporation stock. Said Haslem and Gale also actively solicited contracts for open purchase of Ute Distribution Corporation stock from and for persons who were non-Indians. Such activities were conducted on First Security Bank premises, during Bank business hours, using Bank stationery and secretarial personnel and Bank facilities. These activities of Mr. Gale and Mr. Haslem, acting individually and in concert with others, materially and substantially affected the offer and sell prices of Ute Distribution Corporation stock in 1963, 1964 and 1965.

34. The effect of the participation of Gale and Haslem on the market was minimized by other transactions some of which, it is fair to say, were encouraged by the Bank's participation in other similar transactions and many of which were independently consummated. During 1963 and 1964, mixed-bloods sold 1,387 shares. Fifty of those shares were bought by Verl Haslem (all after August 27, 1964) and 63 by John Gale (44 prior to August 27 and 19 after). Out of the 1,387 shares sold to white men by mixed-bloods in 1963 and 1964, Gale and Haslem together directly bought 113 shares or 8⅓% of the shares sold by mixed-bloods during those two years. Of the 120 shares sold by the twelve bellwether plaintiffs, Gale directly purchased 10 (5 from Glen Reed and 5 from Wopsock) and Haslem purchased 6 (5 from Glen Reed and 1 from Arthur Workman). Thirty-two other white men who bought directly from mixed-bloods during 1963-64, included the following: Clyde Murray, Richard Murray, Earl Dillman, Clive Sprouse, Richard Bastian, Jack Turner, Sewell Massey, William Hoopes,

LaVere Labrum, Robert Huish, John Chasel, Orin Swain, Wallace A. Davis, Lloyd Labrum, Gordon E. Harmston, Lionel Jenson, James E. Bacon, N. J. Maugher, Jr., Lawrence Luck, Glen L. Anderson, Don Showalter, R. V. Larson, Don Culver, George Houston, J. H. Geerlings, Guy Davis, Kenneth Phillips, Eugene Harmston, Alvin Bowden, Marsden L. Larson, Edgar Clader and George Morris. However, as to all of the designated plaintiffs, Gale or Haslem performed significant steps in implementing their sales as above found and the evidence suggests that this is possibly true concerning the sales of numerous other plaintiffs.

35. Neither Ralph D. Cowan nor any other officer, agent or employee of defendant First Security Bank ever discussed with defendants Gale and Haslem their trust and fiduciary duties respecting Ute Distribution Corporation and mixed blood Ute Indians of said Corporation, even though officials at the Main Office of said Bank were, at all times pertinent to plaintiffs' claims herein, aware that defendants Gale and Haslem, were buying and selling shares of capital stock of Ute Distribution Corporation, both on their own behalf and as agents for others for a fee and which said conduct created a conflict of interest.

36. The deposits of large sums of money at the Roosevelt Office of the First Security Bank by prospective out of state purchasers of Ute Distribution Corporation stock, as aforesaid, was deemed good business for the Bank and the Bank benefited therefrom.

37. The United States mails and other facilities of interstate commerce were regularly employed by defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem in connection with the sale and transfer of the shares of capital stock of the plaintiffs herein.

C. Relating Further to the Question of Liability on the Part of the Defendants.

1. Defendant United States of America did not act arbitrarily or capriciously in the exercise of its discretionary functions referred to in the Conclusions of Law with reference to the following matters:

(a) In fixing the time and circumstance of the termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe pursuant to law.

(b) In approving the organization of the Ute Distribution Corporation and its activities and functions.

(c) In approving the conditions and procedure whereby mixed-bloods could sell their stock in said corpoartion as authorized by statute and regulation.

(d) In approving the terms and conditions of the express trust with reference to the property of mixed-bloods who were minors or deemed incompetent to handle their own property.

(e) In designating and approving the trustee.

(f) In approving in connection with the trustee bank those who should be included or eliminated from said express trust, the court also finding in this connection that the bank, in view of the statutory and regulatory plan, did not abuse its legitimate or reasonable discretion in making such determinations.

(g) In declining to conduct a general educational campaign among members of the mixed-blood to discourage the alienation of their stock in Ute Distribution Corporation.

(h) In failing to order or undertake an appraisal of the mineral interests owned by the Ute Distribution Corporation in undistributed lands.

2. The court believes that some of the actions or failures of the defendant United States of America in certain of the discretionary areas mentioned above, particularly in retrospect, were unwise or ill-advised, but in view of the natural aspirations of the mixed-bloods toward self-sufficiency and determination, the statutory mandate and authority to this end, the necessity of arriving at judgments with regard to the implementation of such authority and other related considerations, the court cannot find that there was an abuse of the discretion of the Bureau of Indian Affairs or any other agency of the defendant United States of America in the respects mentioned; and as determined in the Conclusions of Law hereafter no liability can be found upon the basis of the exercise of those discretionary functions pursuant to the express limitations of the Federal Tort Claims Act.

3. As found hereafter as a conclusion of law, while a trust relationship generally was terminated as to the mixed-bloods prior to August 27, 1964, limited aspects of the federal trust relationship continued until the latter date with respect other restrictions governing the alienation of stock in Ute Distribution Corporation issued to mixed-bloods and related considerations. Both as a part of such continuing duties and in connection with functions and duties assumed by the United States of America and particularly its Bureau of Indian Affairs, the defendant United States of America was under the duty to use reasonable care to the extent it lent its offices and assistance to the alienation of such stock to discourage and prevent the inconsiderate, improper, illegal and improvident sale to white persons.

4. With respect to each of the designated plaintiffs the defendant United States of America, through its officers and agents acting within the scope of their authority, by transmittals of information and the execution of certificates or other documents as in the findings more particularly detailed above facilitated the sale of stock of the Ute Distribution Corporation; that if due care had been exercised by the defendant United States of America in avoiding or preventing irregularities in connection with illegal and improvident sales, said sales would not have been made and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the said United States of America through its officers and agents to use reasonable care.

5. More particularly the court finds that the regulatory plan for the transfer of stock of the mixed-bloods, and the designation of the bank as an agency of the government for this purpose, while involving discretionary functions and decisions, established a situation in which it was especially important for the government to be aware and vigilant concerning the possibilities of the mixed-bloods' being imposed upon in view of such a system; and it became and was the duty of the government under all of the circumstances to use reasonable care to ascertain whether its system through subterfuge or abuse was being utilized to avoid the substantive requirement of fair dealing with the Indians in spite of form and to use reasonable care to see to it that its agent the bank and its employees through conflicts of interest or otherwise did not deal unjustly with said Indians in respect to the transfer of said stock.

6. That the United States of America through its agents and employees and the Bureau of Indian Affairs had reasonable cause to know that the mixed-bloods were being imposed on and victimized in the acquisition of their stock by white

persons through the agency of bank employees and nonetheless took affirmative steps to implement and facilitate the acquisition of the stock of the designated plaintiffs by white persons as in these findings more specifically set out without using reasonable care and taking reasonable steps required in the exercise of reasonable care to prevent said sales to terminate the adverse dealings of said bank employees and to dissuade the designated plaintiffs from selling said stock under the circumstances or at least to fairly bring to the attention of prospective sellers all pertinent facts within the government's knowledge before the government affirmatively implemented the sale of stock in the various cases. As to the designated plaintiffs this the government failed to do.

7. That such negligence on the part of the employees and agents of the defendant United States of America acting within the scope of their authority was the proximate cause of the sale of said stock by the designated plaintiffs.

8. That the designated plaintiffs while not incompetent in the narrow sense of the term, were generally unversed in business transactions, were acting under extreme financial pressures and did not have the judgment, capacity or restraint common to white people of their ages and educations. That aside from Joseph A. Workman and Oran Curry, the designated defendants were generally uninformed and unaware of the potential value of said stock and none of the designated plaintiffs had information or advice sufficient to bring home to them the possibility that such stock eventually might become exceedingly valuable, and particularly were not on reasonable notice until within two years from the institution of this action that they had sold their stock as a result of an unlawful plan or artifice on the part of the bank as negligently permitted and implemented on the part of the government.

9. With the exception of the said Joseph A. Workman and Oran Curry the designated defendants were not contributorily negligent in selling their stock and are not barred by contributory negligence from recovery herein; nor are any of the designated plaintiffs in pari delicto with the defendant bank.

10. That the designated plaintiffs in form subscribed to affidavits which were not full, true and accurate but were not in a position or with information or training sufficient to exercise a considered judgment in this respect and were induced to do so by the purchasers of said stock with the acquiescence and assistance of said agents of the bank.

11. That any irregularities on the part of the designated plaintiffs in the execution of affidavits was not the proximate cause of said plaintiffs' damages since the United States was upon notice of such irregularities and the gist of designated plaintiffs' damages beyond their failure to receive the advertised price was the failure to receive the full market value of said stock.

12. That the defendants Gale and Haslem devised a plan of scheme to acquire stock in the Ute Distribution Corporation from the mixed-bloods and to aid and abet others in acquiring such stock for their own profit, the profit of others and in order to promote bank deposits and activity in other respects. By means of withholding information necessary to render what was stated or implied by them not misleading, and in violation of their duties to make full and fair disclosure to the designated plaintiffs, they aided, abetted and assisted, or directly and completely accomplished the acquisition of said stock from each of the designated mixed-bloods for substantially less than the fair market value of said stock.

13. The defendant Bank was reasonably put upon, and charged with, notice of the improper activities of said employees and was aware of the utilization by said employees of the facilities and prestige of the Bank in accomplishing or aiding in the accomplishment of personal stock acquisitions and created the apparent authority on the part of said agents to accomplish or aid in the accomplishment of said acquisitions knowingly created or permitted the appearance reasonably relied upon and accepted by the designated plaintiffs as an indication that the Bank consented to have said conduct carried on in its behalf by said employees. The said employees had apparent authority to make the representations they did and to conduct the business they did and under all the circumstances of this case the bank is responsible for the conduct of said employees notwithstanding that otherwise the bank acted in good faith and its other officers, agents or employees generally had no part in the improper activity with the exceptions hereinabove referred to.

D. Relating to Damages.

1. The Ute Distribution Corporation was organized pursuant to the laws of the State of Utah as a conduit through which the individual mixed-blood Indians were to receive a proportionate share of the Tribe's interest in (a) Unajudicated and unliquidated claims against the United States and (b) The other assets, viz., underlying minerals not susceptible of practical distribution. The Ute Distribution Corporation owned no other assets and engaged in no business except the managing, jointly with the Ute Indian Tribal Council, of the mineral assets and distribution of the proceeds therefrom.

2. The principal mineral rights owned by the Ute Indian Tribe of the Uintah and Ouray Reservation consists of so-called oil shale deposits. Oil shale is known to exist in the greatest

concentration in the Parachute Creek Member of the tertiary Green River Formation as well as in other members of the Green River Formation, which said member and formation entirely underlie the Uintah and Ouray Reservation with the exception of a strip on its northern boundary. Oil shale in that area is known to have substantial present value and great potential value, the timing of the development of which depends upon technological and practical considerations. There is also considerable oil and gas as well as coal and other minerals.

3. Pursuant to the plan of distribution of the assets of the mixed-blood members of the Ute Indian tribe the United States retained the sum of $1200 from the funds of each and every plaintiff to be held in the United States Treasury to pay administration costs and expenses for the prosecution of claims against the United States. The interest of each of the plaintiffs in this $1200 to the extent unexpended was transferred to the purchasers at the time of the sale of plaintiffs' stock.

4. Sale by plaintiffs of their stock also transferred their interest in the sum of $7,900,586.16, which was appropriated for the confederated bands of the Ute Indians as a result of an award by the Indians Claims Commission with respect to docket number 327 in 1965. Of said sum $1,173,632.23 was distributed to stockholders in the Ute Distribution Corporation.

5. Sale by plaintiffs of their stock in Ute Distribution Corporation also resulted in the transfer by them of their interest in additional claims against the United States which have not yet been finally adjudicated. Such claims included a stipulated judgment of in excess of $7,000,000 which moneys have not yet been appropriated and a special appropriation of in excess of $500,000 which is presently pending before

Congress, and which if realized will result in the distribution of the share of the mixed-bloods to stockholders of said corportion.

6. The evidence indicates that during the years 1964 and 1965, stock in the Ute Distribution Company was being sold by mixed-bloods at a price between $300 and $700 per share. The evidence also indicates that during such period stock was being purchased and sold between white persons for prices of approximately $500 to $700 per share. What the stock has sold for since the institution of this action is not revealed meaningfully by the evidence, although presumably subsequent to the institution of the action there would be reflected in sales prices at least to a degree the revelations and contentions incident to this litigation.

7. While considerable market data are available concerning the value of said stock, such data are not deemed fully indicative of the fair value of the stock for the purposes of this action. The prices paid during said period were influenced by the improper activities of Gale and Haslem and the negligence of the government as herein found, and by the facts that the typical Indian seller was not as well informed of the potential value of said stock as the typical buyers, the numbers of sellers exceeded the number of buyers, and the typical Indian seller was under heavy economic pressure to sell. There is evidence that a well informed employee of the government had expressed the opinion that the stock was worth in excess of $700 per share. Only a portion of the depressant factors was attributable to the defendants, and there is indication that in sales between white persons where most of these factors were of minimal importance or were non-existent the price did not materially exceed $700 per share. There is evidence also that the tribe had reasonable opportunity to purchase when its officials were as well informed concerning the

potential value of the stock as anyone, and that it declined to purchase such stock at available prices ranging between $350 and $700.

8. The court cannot accept the claims of the plaintiffs that the stock should be evaluated at in excess of $28,000 per share for the purposes of this action or that it will have such value in the materially foreseeable future. Any such valuation is deemed speculative and unrealistic, would give plaintiffs the immediate benefit of all they might hope eventually to realize had there been a rescission of said sales without running any risks, uncertainties or delays of stock retention, would give effect to an erroneous measure of damages, and would be incongruous with the situation of numerous mixed-bloods who have retained their stock or who disposed of it without participation or influence of any acts or failures of the defendants.

9. The court believes that its problem is not merely to determine what an undivided mineral interest ultimately might be worth on the basis of limited known transactions and developing technology and conditions were it developed or realized, or to indulge in similar projections of value, nor to be governed solely by the sales prices received for said stock during the particular period in question. But it does consider that the data in evidence going to both these matters were and are relevant in varying degrees to its basic problem of determining in reasonable approximation as of the time of the plaintiffs' losses the fair value of said stock. That there is no evidence going precisely to such value and that the measures suggested by the respective parties cannot be accepted by the court on the basis submitted by them, should not preclude the court as fact finder in reaching a judgment as to value in view of the totality of circumstances in evidence and the plaintiffs' burden of proof on the issue of damages. The

plaintiffs have failed to convince the court by a preponderance of the evidence that said stock as of material times exceeded in value the sum of $1500 per share but has convinced the court by what it regards as the preponderance of the evidence that the stock at the time of its sale by the designated plaintiffs as hereinabove found.

10. As the result of settlements made by plaintiffs with other defendants prior to and during trial, the designated plaintiffs have received the following amounts:

Glen Reed	$ 30.93
Fred Burson	399.87
Letha Wopsock	350.05
Louise A. Case	153.91
Melvin Reed	30.93
Marguerite M. Hendricks	350.05
Joseph Arthur Workman	30.93
Leonard Richard Burson	30.93
Oran F. Curry	30.93
Stewart Eugene Reed	30.93
Richard Henry Curry	350.05
Charles T. Reed	30.93

From the foregoing Findings of Fact the court now makes and enters the following

CONCLUSIONS OF LAW

1. The court has jurisdiction over the persons of the parties and the subject matter of this action by virtue of the Tort Claims Act as to the government and the Securities and Exchange Act of 1934 as to the Bank.

2. The burden of proof was upon the plaintiffs to prove that employees of the United States acting within the scope of their employment and authority were negligent and that such negligence proximately caused or contributed to cause the sales in question.

3. The United States at all times pertinent to the claims of the plaintiffs herein, prior to August 27, 1964, owed a duty to each mixed-blood Ute Indian to exercise reasonable care to

(a) Advise each mixed-blood Ute Indian whose stock it documented for sale of significant material facts or information relating to or bearing upon the value of said stock.

(b) Determine and assure that First Security Bank, selected as trustee, business agent and transfer agent by the United States, and the agents of said Bank, faithfully and fairly discharged their duties toward the mixed-bloods with reference to the sale of said stock.

(c) Require and verify by appropriate evidence, that each mixed-blood Ute Indian who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the said shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers;

(d) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(e) Fairly protect each mixed-blood Ute Indian against imposition or his own improvidence resulting in the loss or dissipation of his shares of capital stock of Ute Distribution Corporaton the sale of which the government documented and implemented.

(f) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation; and

(g) To stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value.

4. Notwithstanding the termination of wardship in the broad sense, the Secretary still was under legal duties and responsibilities toward the mixed-bloods at all times prior to August 27, 1964, to use reasonable care in documenting and implementing transfers of stock from the mixed-bloods to see that the statute governing transfers was observed in substance as well as in form, to discourage improvident transfers and to prevent fraud or imposition against the mixed-bloods in connection wtih the transfers as documented and implemented by the Secretary's acts.

5. It rested with Congress to determine when the guardianship relationship between the government and the mixed-bloods ceased and when and how termination should be effected and whether emancipation would at first be complete or only partial and Congress determined that in spite of general termination of guardianship the emancipation of the mixed-bloods was only partial with reference to the transfer of their stock representing undivided interests in tribal lands and minerals. And the court concludes that the government had a continuing duty to use reasonable care in connection with the documentation and implementation of said transfers. The court further concludes that the view of Superintendent Zollar that the government owed to the mixed-bloods only the

duty to see that sales were implemented in the form provided by the regulations was too narrow a view of the government's responsibility.

6. The government undertook to perform services and functions pursuant to legislative authority, and otherwise, in the implementation and documentation of transfers of stock by the mixed-bloods and had the duty to exercise reasonable care in connection therewith.

7. The duty of the United States not to lend its assistance to transactions concerning which there was reasonable ground to believe were questionable arose particularly in view of the failure of the system approved by the Secretary to bring to the attention of the mixed-bloods through delivery of their stock certificates the warnings printed thereon.

8. By designating, and working with the bank in connection with the stock owned by the mixed-bloods and by formally documenting and implementing transfers by the mixed-bloods in cooperation with the bank, the government created an aura of responsibility in connection with the transactions involving the sale of Ute Distribution Company stock by the mixed-bloods in the light of which the negligence of the agents and the question of contributory negligence on the part of designated plaintiffs must be weighed and evaluated. In the light of such appearance, the artifices of the bank employees were all the more effective, the exercise of reasonable care on the part of the government agents all the more necessary and the acceptance by the Indians of questionable practices all the more natural.

9. The court concludes that the designated plaintiffs have sustained their burden to prove by a preponderance of the evidence that negligence on the part of government employes acting within the scope of their employment in viola-

tion of the above mentioned duties proximately caused damages to the designated plaintiffs.

10. That in the execution of the statute governing termination of mixed-bloods and the disposition of their interest in said corporation, the United States failed to use due care to discourage improvident transfers of said stock by the designated plaintiffs and the acquisition of said stock by white persons through imposition and artifice.

11. The burden was upon the government to prove by preponderance of the evidence that the designated plaintiffs were contributatorily negligent and that such negligence proximately contributed to cause the damages complained of. The government has failed to sustain the burden of proof on this point except as to Joseph Arthur Workman and Oran F. Curry. The other plaintiffs by reason of their circumstances, lack of information and understanding and dependence upon government information and assistance are not deemed to have been contributorily negligent under the circumstances.

12. The defendants have failed to prove by a preponderance of the evidence that the claims of the designated plaintiffs are barred by any statute of limitations. The court concludes that the claims of the designated plaintiffs against the government are not barred by 20 U.S.C. 2401. Under the circumstances of the case, the defendants were not reasonably placed upon notice of the unlawful conduct of the Bank's employees or of the legal damage they sustained as a result thereof until within two years of the commencement of this action. The related negligence of the government in documenting and implementing sales by the mixed-bloods in view thereof was not reasonably discoverable by the designated plaintiffs, until within two years before the government was made a party herein.

13. The liability of the United States as herein determined arises out of and is based upon negligent acts or omissions of employees of the United States while acting within the scope of their office or employment in discharging the aforesaid duties and said negligence does not fall within any of the exceptions to the Federal Tort Claims Act specified in 28 U.S.C. 2680, and did not involve discretionary functions.

14. At all times pertinent to the claims of the plaintiffs herein, First Security Bank and its agents, including defendants John B. Gale and Verl Haslem, owed a duty to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation the transfer of whose stock it implemented, aided and abetted or otherwise participated in, to

(a) Avoid any conflict of interest with the interest of the mixed-blood Ute Indian stockholders of Ute Distribution Corporation;

(b) Conduct themselves with loyalty and fidelity with respect to the rights and interests of each mixed-blood Ute Indian stockholder of Ute Distribution Corporation;

(c) Discourage each mixed-blood Ute Indian stockholder of Ute Distribution Corporation from the sale, mortgage, pledge or other alienation of his shares of capital stock of Ute Distribution Corporation;

(d) Stress to each mixed-blood Ute Indian stockholder of Ute Distribution Corporation that the Tribal assets of the Ute Indian Tribe, as to which the capital stock of Ute Distribution Corporation represented an interest, were of unknown but substantial value;

(e) Fully inform each mixed-blood Ute Indian stockholder of shares of capital stock of Ute Distribution Corpora-

tion of any material fact or information known to said Bank or its agents relating to the value, or which could have an influence upon the value, of the caiptal stock of Ute Distribution Corporation;

(f) Require and verify by appropriate evidence, that each mixed-blood Ute Inidan who sold his shares of capital stock of Ute Distribution Corporation received the same or a greater price than that at which he had offered the shares to the Ute Indian Tribe and its members and that all sales be on the same terms as stated in said offers.

(g) Require that each mixed-blood Ute Indian be informed, by physical inspection or otherwise, of the substance of the legends printed on the Ute Distribution Corporation stock certificates;

(h) Verify the regularity of each transfer of Ute Distribution Corporation stock by a mixed-blood Ute Indian as to which the Bank guaranteed signature.

15. The Bank occupied toward the mixed-blood Indians not coming within the express provisions of the trust if not the position of a fiduciary in the strict sense at least a duty to deal with and for the mixed-bloods in good faith and lawfully and without purpose of overreaching or imposition.

16. The defendants Gale and Haslem directly and indirectly by the use of the means and instrumentalities of Interstate Commerce and of the mails in connection with the purchase of shares of the capital stock of Ute Distribution Corporation from the designated plaintiffs employed a device, scheme or artifice to defraud the said plaintiffs, omitted to state material facts necessary in order to make statements which they made in the light of the circumstances under which they were made not misleading to the plaintiffs and used

and employed manipulative and deceptive devices and contrivances and aided other persons in doing so, in violation of Section 10 of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated pursuant to said section. The Bank became and was responsible for the unlawful acquisitions of the stock of the designated plaintiffs thereby.

17. Within the doctrine of apparent authority as reflected in Westinghouse Credit Corporation v. Green, 384 F.2d 298 (10th Cir. 1967), and by reason of the creation of an appearance of responsibility and of ratification, the bank became and is liable for the unlawful acts of its employees Gale and Haslem in participating in the acquisition and purchase of the stock from the designated plaintiffs.

13. The designated plaintiffs were not and are not in pari delicto with defendants Gale and Haslem and are not barred from recovery for any such reason.

19. The claims of the designated plaintiffs against the Bank are not barred by any statute of limitations. The limitation provision of the Securities Act of 1933, 15 U.S.C. Section 77(a) does not apply, but rather by analogy the three year statute of limitations governing actions for fraud under the state statute applies.

20. First Security Bank through its agents, Gale and Haslem, wilfully, wantonly and knowingly breached and failed to discharge duties owed to the designated plaintiffs herein and said plaintiffs were thereby deprived of their said stock for an inadequate consideration.

21. The United States mails and other instrumentalities of interstate commerce were regularly employed by First Se-

curity Bank and its agents, including the defendants John B. Gale and Verl Haslem, in connection with the sale by and the purchase from the said plaintiffs of a security, viz., shares of capital stock of Ute Distribution Corporation.

22. The acts and failure of Gale and Haslem, in violation of the proscriptions of Rule 10b-5, proximately caused the loss of the designated plaintiffs' stock for an inadequate consideration.

23. The reasonable and fair value of a share of capital stock of Ute Distribution Corporation at the time of its sale by the designated plaintiffs was $1500 per share.

24. Except as hereafter provided, each of the designated plaintiffs is entitled to judgment against each defendant in the amount of $1500 multiplied by the number of shares of said stock sold by each plaintiff, less the fair value of the consideration received by such plaintiff therefor and less the settlements received from other parties as herein found, plus plaintiffs' costs and disbursements herein. Judgment shall not be entered in favor of the said Curry and Workman against the government, nor shall it be entitled against the government as to any sale the commitment of which occurred after August 27, 1964.

25. The court should reserve jurisdiction to adjudicate the claims of plaintiffs other than the designated plaintiffs with due regard to the pertinent factual and legal determinations herein, or as the court may consider proper, and to enter final judgment with respect to all claims.

26. The court should certify the interlocutory judgment concerning the designated plaintiffs for recommended inter-

locutory appeal, since such a course would be likely to advance and expedite the final determination of this case.

Counsel for the plaintiffs shall within fifteen days prepare, serve and file a proposed form of judgment consistent with these conclusions, to be settled at the court's first motion day following said period.

Dated this 18th day of April, 1968.

A. Sherman Christensen
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ANITA REYOS, et al,

Plaintiffs, Appellees and Cross-Appellants,

v.

UNITED STATES OF AMERICA, et al,

Defendants, Appellants, and Cross-Appellees.

No. 40-69
No. 41-69
No. 42-69
No. 43-69
No. 44-69

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
(District Court No. C-39-65)

Edmund B. Clark, Attorney, Department of Justice, Washington, D.C. (Shiro Kashiwa, Assistant Attorney General, Washington, D.C., William T. Thurman, United States Attorney, and H. Ralph Klemm, Assistant United States Attorney, Salt Lake City, Utah, and Roger P. Marquis, Attorney, Department of Justice, Washington, D.C., with him on the Brief), for Appellant, United States of America.

Richard C. Cahoon, Salt Lake City, Utah (Thomas R. Blonquist, of Burton, Blonquist, Cahoon, Matheson & Shaffer, Salt Lake City, Utah, with him on the Brief), for Appellant, John B. Gale.

Hardin A. Whitney, Jr., Salt Lake City, Utah (O. Wood Moyle II, Salt Lake City, Utah, with him on the Brief), for Appellant, Verl Haslem.

Marvin J. Bertoch, Salt Lake City, Utah (Merlin O. Baker, of Ray, Quinney & Nebeker, Salt Lake City, Utah, with him on the Brief), for Appellant, First Security Bank of Utah, N.A.

Parker M. Nielson, Salt Lake City, Utah (Adam M. Duncan, Salt Lake City, Utah, with him on the Brief), for Appellees, Anita Reyos et al.

Before LEWIS, Chief Judge, SETH, Circuit Judge, and BRATTON, District Judge.

SETH, Circuit Judge.

These suits were commenced by eighty-five individuals with whom the United States originally had full trust relationship as Indians of the Tribe of the Uintah and Ouray Reservation in Utah. Of this group of plaintiffs twelve individuals were selected by the parties as the ones whose cases would be tried first as test cases. These are referred to as the plaintiffs and are the appellees herein.

An Act of Congress directed that the federal trust relationship with the mixed-bloods of the Tribe be terminated, and the tribal property be divided between the mixed-blood and the full-blood groups. This is referred to as "termination." All plaintiffs belonged to the group of some 490 individuals designated by statute as the mixed-bloods of the Tribe.

The termination statute (68 Stat. 868, 25 U.S.C. §§ 677-677aa) permitted the mixed-blood group to form associations or corporations to handle some of the property difficult or impossible to distribute to individuals which was allocated to the mixed-blood group, and for matters of general concern to this group. One such corporation so formed was the Ute Distribution Corporation, the stock of which and the stockholders are concerned in these suits.

One type of property which the termination statute stated was not to be distributed to individuals was the gas, oil, and mineral interests. Upon division of the tribal property, a portion thereof in undivided interests was allocated to the mixed-blood group. The Ute Distribution Corporation was organized to "handle" this interest of the mixed-bloods jointly with the Tribal Committee which had authority over the full-bloods' share. It was also organized to distribute the group's portion of unliquidated claims against the United States.

Ten shares of stock in the UDC were issued to each person in the mixed-blood group, and distributions or dividends were paid to the stockholders from time to time. The defendant bank entered into a contract with this corporation to act as transfer agent and to provide to it some record keeping and related services. In addition, the bank, under the termination statute, was authorized to act as trustee of

express trusts for mixed-bloods who, in the opinion of the Secretary of the Interior, needed such help.

The individual defendants Gale and Haslem were assistant managers of a facility of the bank located in an area where a number of the mixed-bloods lived, and who dealt directly with some of the plaintiffs in the sale or transfer of their stock.

The plaintiffs were stockholders of the UDC who sold shares of their stock to non-Indians. The bank facilities and services were used in connection with these sales or some of them. The causes of action against the bank allege a breach of the bank's duty arising from the agreement with the UDC and from its participation in the sales of stock. The action against the bank is also based on Regulation 10b-5 of the Securities and Exchange Commission. The causes alleged against the individual defendants Gale and Haslem are based solely on this Regulation.

Some time after these suits were filed the complaints were amended to include a cause of action against the United States under the Tort Claims Act. This cause alleged a breach of duty by the Secretary of the Interior and the local officials of the Bureau of Indian Affairs in connection with the transfer of the shares of stock.

The trial court, in some one hundred pages of findings and conclusions, found the defendant bank and defendants Gale and Haslem liable for damages to each of the twelve plaintiffs whose cases were selected as test cases for all sales made by them. The United States was found liable only as to some of the plaintiffs. The trial court used the figure of $1500 per share as a value for computing damages.

All defendants have appealed from the judgment of the trial court, and the twelve designated plaintiffs, whose cases

were tried, have cross-appealed on the ground that the damages were inadequate.

Liability of the United States Under the Tort Claims Act:

The position or status of the plaintiffs as related to the provisions and the execution of the termination statute has become one of the fundamental issues on this appeal. The statute, Public Law No. 83-671 (25 U.S.C. §§ 667-677aa), provides solely and expressly for the termination of the federal trust relationship to the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, and for termination of federal supervision over the trust and restricted property of the mixed-blood members of the Tribe. It directs that there be made a division of the tribal property between the mixed-blood and the full-blood members, and provides the procedure for termination of the mixed-bloods.

An examination of the significant portions of the statute is necessary for a proper consideration of the issues. The statute provides for the preparation of membership rolls for each group and the partition and distribution of the tribal assets between the two groups. It also states that upon distribution of the divisible property to the mixed-blood members, federal supervision of such member and his property shall thereby be terminated except as to property not susceptible of practical distribution such as oil, gas, and mineral rights which shall remain subject to the provisions of the Termination Act. Upon termination the mixed-blood individuals shall not be entitled to the services performed by the Government for Indians; that statutes of the Unied States which affect Indians because of their status shall no longer be applicable to such persons, and that the laws of the several States shall apply to the said members in the same manner as to other citizens within the State. The statute further states that the

Secretary shall ". . . protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in the need of assistance in conducting their affairs, by such means as he may deem adequate, . . ." Provision is made for the mixed-blood members of the Tribe to organize for common purposes and adopt a constitution and bylaws. The Act specifically recites that corporations may be formed by the mixed-bloods for grazing of livestock, for the "handling" of water and water rights, and that distribution of property may be made to such corporations.

As to gas, oil, and mineral rights in the Ute lands, provision is made that these interests be held in undivided shares by the full-blood members on the one hand, and by the mixed-blood group on the other hand. The Act contemplates that an organization be formed by the mixed-blood group for the purpose of empowering individuals to act as "the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and (sic) [of] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind. . . ." As indicated in the foregoing sentence provision is made in the Act for the joint management of the gas, oil, and other mineral rights by the Tribal Business Committee and the "authorized representatives" of the mixed-blood group. The Act directs that the net proceeds therefrom after deducting the cost chargeable to such management shall be divided between the full-blood and the mixed-blood groups in proportion to their respective numbers on the final membership rolls.

The statute directs that at a stated time the Secretary of the Interior issue a proclamation that the federal trust relationship is terminated. This proclamation was so issued on the 26th day of August, 1961, following the distribution of the property to the mixed-blood members excepting the oil, gas, and minerals as contemplated by the statute.

The mixed-bloods formed a corporation in 1956, the Ute Distribution Corporation (UDC), and 4900 shares of stock were issued. Each mixed-blood received ten shares. The corporate charter recites that it was formed to "manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe" the gas, oil and mineral rights in common ownership and unliquidated claims against the United States. This was the undistributed property and legal title remained in the United States. The Secretary of the Interior acquiesced in the formation of the corporation, and approved the Articles of Incorporation. The transfer of shares in this corporation by the plaintiff mixed-bloods to non-Indians gave rise to this litigation. The defendant bank became the transfer agent for the transfer of shares of UDC stock. Distributions to UDC shareholders of receipts from mineral leasing were made from time to time.

Of particular significance to the issues on this appeal is a provision in the termination statute giving the right to the mixed-blood members to dispose of property they received by distribution. This section states:

> "Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-

year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period." (25 U.S.C. § 677n).

See also the Secretary's Regulations at 25 C.F.R. § 243.8.

The essential elements of the quoted section were incorporated in the Articles of Incorporation of the Ute Distributon Corporation to govern the sale of the corporate shares. Thus in the event that a stockholder of the Ute Distribution Corporation desired to sell his stock before August 27, 1964, it was necessary that it first be offered for sale at a stated price to the Tribe or to the members of the Tribe. The procedures and the documents necessary to carry out this provision were arranged for and agreed upon by the local representative of the Bureau of Indian Affairs, by the defendant bank as transfer agent, and by the UDC.

Much of the testimony during the trial concerned the execution and delivery of various documents which were required to carry out this requirement of the corporate charter. This provision can best be referred to as a right of refusal in the members of the Tribe or the Tribe. It expired on August 27, 1964.

As indicated above, the trial court determined that the United States was liable to the plaintiffs under the Tort Claims Act by reason of a breach of duty in connection with the plaintiffs' sale of their shares of stock in the UDC. This is based on a conclusion that a residual wardship or trust relationship existing between the United States and the plaintiffs survived the statutory termination procedures. The trial court found that the United States had a duty to discourage and to prevent "inconsiderate," "improper," "illegal," and "improvident" sales by the plaintiffs to non-Indians. The court further found that if the United States had prevented irregularities in connection

with such sales, ". . . said sales would not have been made, and that the sales of their stock by the designated plaintiffs was the proximate result of the failure of the United States . . . to use reasonable care." The court also determined that the United States had reasonable cause to know that the plaintiffs were being imposed upon and that the other defendants were acting improperly. Thus the court held that the negligence of the United States was the proximate cause of the sale of the stock by the plaintiffs.

In its findings and conclusions the trial court does not refer to any particular source of the Government's duty other than the statement that "limited aspects of the federal trust relationship continued until the later date [August 27, 1964] with respect to the restrictions governing the alienation of the stock in the Ute Distribution Corporation," and that under "such continuing duties," it was obligated to discourage and prevent improper and improvident sales. It would thus appear that the court found the limited trust relationship to continue by reason of the right of refusal which was held by the members of the Tribe or the Tribe and applicable to sales of the corporate stock.

The plaintiffs in this appeal urge that some continuation of the supervision or wardship giving rise to a duty on the part of the United States resulted from the right of refusal. Plaintiffs refer to the provision as a "restriction on property."

We must hold that the trial court was in error in this respect. The provision in the Articles of Incorporation that if the stock was to be sold before August 27, 1964, it should first be offered to "members of the Tribe," constitutes no more than a typical right of refusal in the members of the Tribe or in the Tribe. It was somewhat more difficult to carry out by reason of the fact that notice had to be given to a fairly large number of individuals and provision had to be made to ad-

vise the prospective seller that his offer had or had not been accepted by the members of the Tribe. This the Bureau of Indian Affairs undertook to do. It was also necessary if an offer was not accepted, and the prospective seller completed the sale to a stranger, to demonstrate to the Tribe or its members that the sale was in accordance with the offer made to them. This was done by an affidavit executed by the seller stating the sales price received. Other than these complications the provision is a commonplace one.

Considerable argument is presented as to whether or not the mixed-bloods were members of the Tribe for the purpose of the right of refusal or whether the right was in the Tribe as such or in the members, but this need not be decided for it is clear that the plaintiffs themselves had no rights under the right of refusal. For a discussion of this point see Ute Indian Tribe of the Uintah and Ouray Reservation v. Probst, Tenth Circuit, Nos. 125-69 and 126-69, April 20, 1969, ... F.2d ..... (10th Cir.). The shareholder who was here proposing to sell his stock cannot be considered to be within the group in which the right vested. The right was granted clearly to permit the members of the Tribe, the Tribe, or the full-blood members to have the first right to purchase property which was about to be sold to an outsider. This provision was for their benefit in an economic and practical way, and if any purchase was to be made, the members of the Tribe or the Tribe had to do it. The record shows that the Tribe considered purchasing UDC shares when offered, but did not do so nor did any individuals in the Tribe. The right of refusal did not create any "restricted property" in the shares as the term is generally used.

The right of refusal thus created no duty on the part of the Government to the then terminated mixed-blood plaintiffs who were seeking to sell their shares of stock. Likewise the procedures and documents devised to carry out the right of

refusal and their execution and delivery created no such duty on the part of the United States to the plaintiffs. The statute expressly provides for termination of the Government's relationship with the individual mixed-bloods. The provisions are clear and the termination was accomplished and is final. It is clearly within the power of Congress and no one else to provide for such an end to the relationship between these individuals and the Government. United States v. Waller, 243 U.S. 452; United States v. Nice, 241 U.S. 591; Tiger v. Western Investment Co., 221 U.S. 286. It is not for administrative officials or for the courts to modify this statutory termination by the creation of some status lying between wardship and complete termination.

There is not an abundance of authority on the application of termination statutes; however, the court in Crain v. First National Bank of Oregon, 324 F.2d 532 (9th Cir.), considered the Termination Act relating to the Klamath Tribe. There the court considered determinations made by the Secretary to create express trusts for those "in need of assistance in conducting their affairs," and the effectiveness thereof after termination. The court held that termination was complete except as to the express trusts, and recognized the power of Congress to provide the how, when, and extent of termination. The plaintiffs here urge that the Crain case holds that there continues some trust relationship with all the terminated members. Crain holds that where express trust exists, the individuals under such trusts cannot complain that their property is in trust while others may have received theirs outright. We are not concerned in the case before us with the property of individuals under express trusts. See also Menominee Tribe v. United States, 391 U.S. 404, and Klamath and Modoc Tribes v. Maison, 338 F.2d 620 (9th Cir.).

The trial court was thus in error in concluding that "limited aspects of the federal trust relationship continued,"

or that any form of wardship continued, and thus that some duty on the part of the Government to the plaintiffs continued after termination in connection with their sales of UDC stock. There being no duty the trial court was in error in awarding damages against the United States under the Tort Claims Act.

Position of Defendant Bank Under its Contract With The UDC:

The legal relationships and the business relationships between the plaintiffs and the defendant bank, and with the Ute Distribution Corporation were determined basically and initially by the contract which had been entered into between the bank and the UDC. This agreement was modified somewhat from time to time in practice. The contract was entered into in 1958, but the principal issues with which we are concerned took place in the years 1963, 1964, and 1965.

The principal purpose of the contract between the bank and the UDC was to have the bank provide stock transfer services, to do the corporate record keeping, the corporate accounting, and handle distributions or dividends.

Of particular consequence in this case was the provision that the bank would act as stock transfer agent for the corporation, and would also assist the corporation in the conduct of its business. The record indicates that it was expected that the bank in the performance of its duties would also accommodate or provide stock transfer services for the individual stockholders of the corporation. This was demonstrated by the fact that the bank was to provide facilities and personnel at Roosevelt, Utah, in an area where many mixed-bloods resided, in order to accommodate transfers of stock. The trial court found that the Roosevelt office of the bank was maintained in part "... for the purpose of facilitating and assisting mixed-bloods in the transfer of Ute Distribution Corporation stock. . . ."

It is apparent that the transfers of stock of this particular corporation would be somewhat complicated by the existence of the right of refusal in the members of the Tribe, which has been hereinabove described. As indicated, this right of refusal necessitated the creation of forms which would demonstrate that the right of refusal had been complied with in order that the bank could proceed with its customary duties as transfer agent.

The contract provided for direct compensation to the bank as transfer agent. It is also apparent from the record that the bank was seeking individual accounts from the tribal members and others. It must be assumed that the parties contemplated the usual notary fees and other ordinary fees incident to the transfers of shares.

As a separate matter the bank had also solicited the use of its trust facilities for express trusts to be established by the Secretary for Indians whom he felt were not able to handle their property, all as provided in the termination statute. The position of the bank under these express trusts and the statutory provisions for them must be contrasted with the position of the bank in its capacity as transfer agent. The two created separate and distinct functions and duties on the part of the bank.

The stock transfer contract contained no provision whereby the bank was to discourage stockholders from selling or transferring their shares; instead the procedure which was established was to facilitate such transfers and located at a place convenient to prospective transferees.

As the contract was put into practice, the bank retained the stock certificates of the individuals, and the transfers were handled by stock powers in the usual way. The record shows that the cetrificates were so retained by the bank in order to prevent their loss by the individual stockholders with

the attendant problems to the corporation and the transfer agent in replacing lost certificates. As will be hereinafter mentioned, the stock certificates bore a warning or admonition to the owners to be careful in selling them as they were of undetermined value. Since the stockholders did not have possession of the certificates, they did not have an opportunity to read this warning.

Much of the testimony on behalf of the plaintiffs concerned the contents of affidavits which were executed by the plaintiffs in connection with their sale of shares. These affidavits were devised to carry out the right of refusal in that they were to demonstrate that the individual stockholder had in fact sold the shares for the price that he had theretofore offered them to the Tribe or its members by public notice. The affidavit was thus to show that the members of the Tribe did in fact have a real first refusal at the actual selling price. The record shows that in some instances the affidavit may not have accurately described the facts in connection with the sale to the third party. Under the procedure the sale was to be for cash, but the record shows that instead some plaintiffs received automobiles or other tangible property directly or indirectly for their stock instead of cash, or part cash and part tangibles. Bank employees notarized most of these affidavits. The plaintiffs here thus complain that these affidavits which they executed were not accurate, and that the bank and its officials were aware that they were not correct. The record also shows that the Bureau of Indian Affairs office relied upon the recitations in the affidavits when received and issued to the bank a certificate which acknowledged that the right of refusal had been complied with and that the bank could proceed to transfer the shares in the usual way. No shares were transferred by the bank without having first received such a certificate during the period the right of refusal was operative.

The trial court expressly concluded that the bank had a duty to discourage the plaintiffs from the sale of their shares of stock of the UDC. This finding or conclusion is not supported by the record as no such duty was created by the practice of the bank and none was provided in the contract. Instead the stock transfer provisions and facilities were provided in order to accomplish and facilitate transfers. The bank was obviously obligated to transfer the shares before August 27, 1964, when requested and when the representative of the Bureau of Indian Affairs indicated that the right of refusal had been honored; and after August 27, 1964, when the stockholder requested that a transfer be made.

The bank, shortly after the contract was executed, received a letter from the attorney for the Ute Distribution Corporation asking that it attempt to discourage sales, but no response was made to the letter and no duty or obligation was created thereby. As described above, Congress had directed termination of the Government's relationship with the plaintiffs, and this had been accomplished at the pertinent times. The business inexperience of the plaintiff stockholders does not give rise to any duty on the part of the bank to treat them in any manner different than it would treat any other customer inexperienced in business. The record is clear that the plaintiff's corporation, the UDC, and its officers were active in their attempts to discourage stockholders from transferring their shares and had written letters and held meetings on this subject, all apparently with little success.

It would appear that the trial court placed considerable reliance in reaching its conclusion on the asserted inaccuracies in the affidavits executed by the plaintiffs concerning their ultimate sales of the shares. However, the bank or the Government had no duty as to these plaintiffs to see that they exe-

cuted affidavits that reflected the true transaction. Furthermore the affidavits were executed in connection with the right of refusal in which, as indicated above, the defendants had no interest. It is difficult to see how they can complain of inaccuracies in their own affidavits.

The record shows that the bank officials at the Roosevelt office of the defendant bank were active in encouraging a market for the UDC stock among non-Indians. This was probably not contemplated by the UDC-bank relationship. This gave rise to some indirect benefits to the bank by way of increased deposits, but it did not constitute a violation of any duty the bank may have had to the plaintiffs by contract or otherwise.

Liability Under Regulation 10b-5 of the Securities and Exchange Commission:

The only cause of action alleged against the individual defendants Gale and Haslem is based upon the violation of Regulation 10b-5 of the Securities and Exchange Commission (17 C.F.R. § 240.10b-5). This regulation was promulgated under the authority of section 10(b) of the 1934 Securities and Exchange Act. This cause of action is also asserted against the defendant bank. Each plaintiff states a separate cause against each of such defendants.

The record shows that the defendant Gale purchased for resale for his personal profit ten shares of UDC stock from two of the plaintiffs. The several plaintiffs sold 122 shares of their stock in some thirty-two separate transactions. The trial court found the defendant Gale liable on the sale of all of the 122 shares.

As to his individual purchases, the record shows that Gale bought five shares from the plaintiff, Glen V. Reed, on July

8, 1964, for $350 per share. This purchase was made by Gale for Neal H. Phelps and Esther Phelps, or were resold to such persons who paid Gale $530 per share for these shares. Defendant Gale did not advise plaintiff Reed of the resale.

Gale also purchased three shares of stock from the plaintiff, Letha H. Wopsock, some time after August 21, 1964, for $350 per share for resale at a higher price which is not disclosed in the record. He also purchased another share from the same person in October 1964 for $400 and an additional share in November 1964 for $350. The disposition by Gale of these two shares is not indicated in the record.

The record does not show whether or not the defendant Gale participated for his personal profit or derived a personal profit from the purchase by other persons of shares of stock from the plaintiffs.

The participation by the defendant Gale in the sales by other plaintiffs to other persons as shown in the record need not be described in detail. In these transactions a typical participation by the defendant Gale was to act as a notary upon affidavits executed by the purchaser in connection with such a sale which have been hereinabove described or to guarantee the seller's signature on a stock power which was the ultimate basis for the transfer of the shares of stock. As indicated above the trial court found the defendant Gale liable on each of these transactions. However, we hold this to be in error.

The "participation" by the defendant Gale in the execution of documents as shown by the record in connection with these sales cannot constitute a breach of duty on his part to any of the plaintiffs. In this connection he did no more than to perform ministerial functions required to carry out the transfer of the shares of stock. In this connection the de-

fendant had no obligation to determine whether the recitations made in the affidavit were correct or not. Furthermore, even if he may have known that the recitations in this affidavit were not entirely correct, the plaintiff executing the particular affidavit was prepared and did assert that the facts were correct, and defendant Gale had no obligation to perform anything but the requested ministerial acts.

As to the individual defendant, Verl Haslem, the record indicates a participation in the transactions which is similar to that described above as to the defendant Gale. The trial court also found this defendant liable on each of the thirty-two transactions covering the 122 shares sold by the plaintiffs in this action. The record shows that the defendant Haslem purchased in November 1964 one share of the UDC stock for a third party or for resale for his personal profit from plaintiff Workman for the sum of $350. This was resold by this defendant for an undisclosed price to his brother.

This defendant also purchased on August 31, 1964, five shares of stock from plaintiff, Glen V. Reed, for $400 per share and resold the stock apparently on the same day at a price not disclosed in the record.

This defendant Haslem "participated" in the other transactions much in the same manner as did the defendant Gale by the execution of affidavits and of signature guarantees and in some instances had nothing whatever to do with the sale. As to these transactions, we find no duty on the part of this defendant to any of the plaintiffs as his acts were purely ministerial in character and were required to accomplish the stock transfers. Likewise his execution of affidavits or guarantees of signature gave rise to no liability to the plaintiffs. Again although the contents of the affidavit may not have been entirely correct, and the defendant may have known of this fact, it did not create any liability to the maker of the incorrect affidavit.

The record clearly shows that the defendant bank, the employer of the defendants Gale and Haslem, had knowledge that its employees were purchasing stock for their own account. Further the record shows that in these transactions, the employees used the bank facilities, premises, and personnel. Under these circumstances, these employees as far as the plaintiffs were concerned were apparently acting within their authority. Thus the bank did become liable for any violation of the Regulation 10b-5.

Regulation 10b-5 reads as follows:

> "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,
>
> "(1) to employ any devitce, scheme, or artifice to defraud,
>
> "(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumsances under which they were made, not misleading, or
>
> "(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

Neither the regulation nor the Act contains any statement of standards to be applied or elements necessary in actions for civil liability to be brought under the Act, and in fact there is no express provision for such actions.

The origin of the rule, its relation to section 17 of the 1933 Act (15 U.S.C. § 77q(a)) and the initial doubt as to

whether civil actions were contemplated need not be stated here as these matters are elsewhere fully described. Jensen v. Voyles, 393 F.2d 131 (10th Cir.); Doelle v. Ireco Chemicals, 391 F.2d 6 (10th Cir.); Crist v. United Underwriters, Ltd., 343 F.2d 902 (10th Cir.); Stevens v. Vowell, 343 F.2d 374 (10th Cir.). See, Cohen, Truth in Securities Revisited, 79 Harv. L.Rev. 1340; 3 Loss, Securities Regulation, ¶¶ 1785-86; Fischman v. Raytheon Mfg. Co., 188 F.2d 783 (2d Cir.); Kardon v. National Gypsum Co., 69 F.Supp. 512 (E.D.Pa.); Securities & Exchange Comm'n v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir.) (258 F.Supp. 262); Annot., 37 A.L.R.2d 649; 59 Yale L.J. 1120; 20 Stan.L.Rev 347; 63 Nw.U.L.Rev. 452; 16 U.C. L.A.L.Rev. 404.

As to the elements to be established, the record shows that the individual defendants made a misstatement of a material fact in representing, in those instances wherein they purchased stock for sale at a personal profit, that the prevailing price or market price was the figure at which their own purchase was made. This representation was obviously false in those instances in view of the fact that they resold the shares almost immediately at a higher price. The record shows that the plaintiffs considered these defendants to be familiar with the market for the shares of stock and relied upon them when they desired to sell their shares. The individual defendants, in stating to the plaintiffs in instances where individual purchases were made by the defendants with quick resale at a higher price that the price offered was "all that they could give" or "was all that it was worth" or similar statements, made a misrepresentation as to the prevailing price. The defendant Haslem testified with reference to his purchase from plaintiff Workman, "I contacted a number of people telling them that if they were interested in selling, I was interested in offering the highest price." The bank and the

individual defendant employees had developed a market at the Roosevelt Agency of the bank for UDC stock, received inquiries from time to time for stock, and had customers of the bank who were prepared to make purchases from time to time. The defendant bank and the individual defendants were thus entirely familiar with the prevailing market for the shares at all material times.

The record shows in some instances that purchases for resale were made, but the resale price is not disclosed in the record. If in these instances there was a resale at a higher price, there was demonstrated thereby a misrepresentation to the plaintiff concerned as to the prevailing market price. This was a material fact. List v. Fashion Park, Inc., 340 F.2d 457 (2d Cir.).

In Stevens v. Vowell, 343 F.2d 374 (10th Cir.), we considered a private action under Regulation 10b-5. The trial court had made findings that critical facts had been concealed from the plaintiff investor and misrepresentations were made to him. The court also specifically found that the plaintiff had there relied upon all the representations made to him by the defendants. These findings were supported by the record. There was no issue on appeal as to reliance, and little as to the fact of misrepresentations. We there stated that it was not necessary to prove common law fraud, but necessary to prove "one of the prohibited actions." This referred to one of the (a), (b) or (c) subsections of the rule. In the cited case the (b) subsection was relied upon and with the reliance established the case was proven. The opinion does not hold that reliance is not required, as the plaintiff urges. It is a basic element of a cause of this nature, and was there shown.

In the case before us the facts of misrepresentation have been shown as to several of the transactions. The record, however, does not contain any evidence relating to reliance

by the plaintiffs on the representations of the defendants Gale and Haslem. This is a necessary element of the cause alleged. List v. Fashion Park, Inc., 340 F. 2d 457 (2d Cir.), considers, defines, and requires both materiality of the representations and reliance. See also, 16 U.C.L.A.L.Rev. 404; 63 Nw.U.L.Rev. 434. The plaintiffs allege that certain acts and statements of the defendants were directed to them or were the proximate cause of their damages. Thus the causal connection must be established — that in fact the loss resulted from defendants' acts — a simple and fundamental proposition in such actions for private damages. The plaintiffs' argument refers to several cases where the proceedings were brought by the SEC for enforcement. The matter of reliance was not there considered, but these are from an entirely different position.

The record does not support the trial court's finding of a conspiracy, plan, or scheme to violate any duties owed to the plaintiffs by any of the defendants. The trial court was in error in so finding.

The record shows sufficient evidence of the use of the mails or instrumentalities of commerce by the individual defendants in their violation of Regulation 10b-5 as described above. The testimony as to the use of checks, even on the defendant bank, together with the correspondence with prospective buyers is sufficient. The defendant Haslem purchased in what are referred to as "face to face" transactions with a plaintiff and the certificate was delivered. However, again a check or checks were used and the trial court's finding is supported on this issue although the facts are not well developed.

The pretrial order is not entirely clear as to the inclusion of transactions taking place after August 27, 1964. However, we must agree with the trial court that these properly became trial issues.

The measure of damages has been referred to above briefly. We hold that the trial court was in error in using the value of $1500 per share in the computation of damages as the evidence does not support such a figure. Also the evidence does not support the finding that the market price was depressed by the defendants. As to the cross-appeals, the evidence as to greater values was entirely speculative, as the trial court concluded.

The measure of damages for breaches of duty under Regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs.

REVERSED and REMANDED for further proceedings in accordance with this opinion.

APPENDIX C

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 175-68 – JUNE 1970 TERM

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association formed by and under the supervision of the Secretary of the Department of the Interior pursuant to Public Law 83-671 (25 U.S.C. §§ 677-677aa) composed of 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, suing on its own behalf and as representative of and for and on behalf of its 490 members and their heirs and legal representatives as a class; and the 490 so-called "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, individually and as an identifiable Indian group or band,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
(District Court No. C-82-68)

Parker M. Nielson, Salt Lake City, Utah (Adam M. Duncan, Salt Lake City, Utah, with him on the Brief), for Appellant.

Edmund B. Clark, Attorney, Department of Justice, Washington, D.C. (Glen E. Taylor, Acting Assistant Attorney General, and Roger P. Marquis, Attorney, Department of Justice, Washington, D.C., with him on the Brief), for Appellee.

Before LEWIS, Chief Judge, SETH, Circuit Judge, and BRATTON, District Judge.

PER CURIAM.

This is an action wherein the plaintiff seeks to have conveyed to its individual members, "pro rata," a portion of the oil, gas, and minerals underlying the Uintah and Ouray Reservation in Utah.

The plaintiff is an unincorporated association organized for and on behalf of some 490 mixed-bloods who were formerly or may be now members of the Ute Indian Tribe of the Uintah and Ouray Reservation. The Congress enacted Public Law No. 83-671 (25 U.S.C. §§ 677-677aa) which provides for the termination of the trust relationship with the mixed-blood

members of this Ute Tribe and for the distribution to them of certain tribal property. The terms of this statute and its execution have been described at some length in the companion cases, Anita Reyos et al v. United States of America, Nos. 40-69 through 44-69, and it is not necessary to describe them further in this opinion.

The termination statute mentions specifically that the interest of the mixed-blood group in the gas, oil, and other minerals and in certain unadjudicated claims was not to be distributed pursuant to the statute. The mixed-bloods' share of this interest constitutes some 27.1686 per cent thereof, the balance being retained by or on behalf of the full-blood members of the Tribe.

The trial court held that it did not have jurisdiction to entertain this action by reason of the fact that it was an unconsented suit against the United States. I further indicated that the termination statute by the provision above referred to precluded any relief to the plaintiff. The plaintiff took an appeal from the dismissal of its complaint and of its action by the trial court.

On this appeal the appellant urges that the action may be maintained pursuant to 25 U.S.C. § 345. This statutory provision provides that an Indian may bring suit against the United States wherein he seeks to gain possession of an allotment when he has been excluded therefrom, or from any parcel of land to which he is lawfully entitled by virtue of an Act of Congress. The appellant's complaint on its face demonstrates that it does not seek relief on behalf of its members as persons who have been excluded from an allotment or have been excluded from or are entitled to possession of a parcel of land. This section of the statute is obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests. The cases and statutory law have ascribed to the word "allotment" a well recognized meaning. The

nature of the interest sought to be protected and secured does not resemble that described in the statute.

By reason of the Termination Act, the mixed-blood group has an undivided 27 per cent beneficial interest in the oil, gas, and minerals; while the full-blood group owns the remainder. The legal title has remained in the United States. The statute of termination directs that no distribution or partition be made of these undivided interests to the mixed-blood members. The statute makes specific provision for the management of these beneficial interests with the Tribal Business Committee representing the full-blood members as to their intrest, and an association or corporation representing the mixed-blood group in the management of its portion. It is not an issue in this case as to what organization on behalf of the mixed-blood group has the right of management, and we do not so decide.

The issues presented in this case fundamentally resemble those presented in Naganab v. Hitchcock, 202 U.S. 473; Motah v. United States, 402 F.2d 1 (10th Cir.); Harkins v. United States, 375 F.2d 239 (10th Cir.), and United States v. Preston, 352 F.2d 352 (9th Cir.).

The appellant also urges that this action comes within the provisions of 28 U.S.C. §§ 1399 and 2409. However, we find no basis for jurisdiction under these provisions which contemplate an ownership wherein the United States is a joint tenant or tenant in common with the party seeking relief. In the case before us legal title is vested in the United States, but the beneficial title is owned entirely by the two groups of individuals.

Thus on the basis of Neganab v. Hitchcock, and the cases cited hereinabove, we hold that the trial court was correct in its determination that it did not have jurisdiction of this action, and the case is therefore AFFIRMED.

APPENDIX D

PERTINENT PROVISIONS OF THE UTE TERMINATION ACT (25 U.S.C. §§677-677aa)

Enacted August 27, 1954, 68 Stat. 868

§ 677. *Purpose*

The purpose of sections 677 677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

§ 677a. *Definitions*

For the purposes of section 677-677aa of this title—

(a) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, exeepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years.

§ 677b. *Method of determining Ute Indian blood*

For the purposes of sections 677-677c of this title Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954.

§ 677c. *Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary*

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group; *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change.

§ 677d. *Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership*

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in sections 677-677aa of this title. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

§ 677e. *Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization*

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677-677aa of this title to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may

be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of said sections.

§ 677f. *Employment of legal counsel for mixed-blood members; fees*

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of sections 677-677aa of this title, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677o of this title.

§ 677g. *Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership*

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in section 677-677aa of this title, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication

in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of sections 677-677aa of this title, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and by-laws of the tribe.

§ 677h. *Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands*

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit: [Real property descriptions omitted]

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be

subject to the terms of sections 677-677aa of this title. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary.

§ 677i. *Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon non-agreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions*

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as pro-

vided in sections 677-677aa of this title. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the

distribution and unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law. [The last paragraph, dealing with stock in corporations, was not part of the law at the time of the acts complained of, but was added by an amendment in 1962]

§ 677j. *Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision*

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677*l* of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary.

§ 677k. *Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property*

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution under sections 677-677aa of this title shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to sections 677-677aa of this title shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution.

§ 677l. *Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan*

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the

State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) The proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of sections 677-677aa of this title, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by sections 677-677aa of this title, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid

lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on acount of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group, after deducting reasonable cost of sale and distribution.

§ 677m. *Same; procedure by Secretary if distribution not completed within seven years from August 27, 1954*

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677*l* of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

§ 677n. *Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions*

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

§ 677o. *Termination of restrictions on individually owned property of the mixed-blood group—Transfer of control of trust property; removal of sales restrictions*

(a) When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by

such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677-677aa of this title, notwithstanding anything contained in said sections to the contrary.

Partition or sale by Secretary prior to removal of restrictions

(b) Prior to the removal of restrictions in acordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be isued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;
(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

§ 677p. *Tax exemption; exceptions and time limits; valuation for income tax on gains or losses*

No distribution of the assets made under the provisions of sections 677-677aa of this title shall be subject to any Federal or State income tax: *Provided,* That so much of any cash distribution made under said sections as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of said sections be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of said sections shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance; *Provided,* That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of sections 677-677aa of this title, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to said sections. [Provisions respecting exemp-

tion from corporate income taxes were not part of the original Act, but were added later by amendment.]

§ 677q. *Applicability of decedents' estates laws to individual trust property of mixed-blood members*

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

§ 677r. *Indian claims unaffected*

Nothing in sections 677-677aa of this title shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

§ 677s. *Valid leases, permits, liens, etc., unaffected*

Nothing in sections 677-677aa of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore aproved.

§ 677t. *Water rights*

Nothing in sections 677-677aa of this title shall abrogate any water rights of the tribe or its members.

§ 677u. *Protection of minors, persons non compos mentis, and other members needing assistance; guardians*

For the purposes of sections 677-677aa of this title, the Secretary shall protect the rights of members of the tribe who

are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

§ 677v. *Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws*

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

§ 677w. *Presentation of development program for full-blood group to eventually terminate Federal supervision; annual progress reports*

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-suporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, repre-

senting the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under sections 677-677aa of this title.

§ 677x. *Citizenship status unaffected*

Nothing in sections 677-677aa of this title, shall affect the status of the members of the tribe as citizens of the United States.

§ 677y. *Execution by Secretary of patents, deeds, etc.*

The Secretary shall have authority to execute such patents, deeds, asignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of sections 677-677aa of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections.

§ 677z. *Rules and regulations; tribal or group referenda*

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 677-677aa of this title, and may, in his descretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

§ 677aa. *Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups*

Whenever any action pursuant to the provisions of sections 677-677aa of this title requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

APPENDIX E

REGULATIONS UNDER THE TERMINATION ACT

(25 C.F.R. Part 243)

Section 243.2 *Definitions.* As used in this part:

* * *

(c) "Member of the Tribe" means all mixed-blood and full-blood members as defined in (a) and (b) of this section.

* * *

(f) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

* * *

(h) "Termination of Federal supervision" means termination of Federal supervision over the particular real estate involved by the issuance of a patent in fee or other similar title document, and does not mean termination of the wardship relationship between the Indian and the United States on the occasion of the issuance of a so-called "Termination Proclamation" (25 U.S.C. 677v).

Section 243.5 *Offer.* Any mixed-blood member of the tribe desiring to dispose of his interest in real property, as herein defined, prior to termination of Federal supervision over such property, must notify the Superintendent of his desire to dispose thereof, and shall state the price and terms upon which the land is offered for sale or which constitute a bona fide offer to purchase.

Section 243.6 *Notice of offer.* The Superintendent shall notify in writing the corporations and the tribal business com-

mittee of the tribe of any offer of sale, and shall post notices of the offer of sale in a conspicuous place in the Uintah and Ouray Agency Office at Fort Duchesne and in the Post Offices of the towns of Roosevelt, Whiterocks, Randelett, Myton, and Fort Duchesne, Utah, for a period of at least ten days. The notices shall specifically describe the terms upon which such sale is to be made and the final date for acceptance of offer from members of the tribe by submission of an appropriate bid.

Section 243.7 *Acceptance of offer.* Upon receipt of an acceptance of the offering from any member of the tribe to purchase such land, the Superintendent shall immediately notify the mixed-blood member making the offer to sell such land and the sale may be completed in accordance with the offer and acceptance. In the event two or more members of the tribe submit an acceptance of the seller's offer, the Superintendent shall call for sealed bids from the parties submitting such acceptances and the sale shall be made to the highest bidder provided the highest bid equals or exceeds the seller's offering price.

Section 243.8 *Certificate of non-acceptance.* If no acceptance is made by a member of the tribe to purchase such land, the Superintendent shall notify the mixed-blood member making such offer that no member of the tribe has accepted the offer to sell and the mixed-blood member may then sell such land at any time within six months thereafter to any person at the same or greater price and upon the same terms and conditions upon which it was offered to the members. The Superintendent shall furnish to such purchaser a certificate, properly acknowledged for recording, certifying that a proper offer at a price and on terms specified in the certificate was made to members of the tribe in accordance with law and the regulations of the Secretary.

Section 243.9 *Re-offer.* If no sale is made, within a six months' period after the seller has been so notified by the Superintendent, then a new offer must be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.10 *Subsequent sale.* If, for any reason, a sale should not be consummated after an acceptance by a member of the tribe, as provided in section 243.7, a new offer to sell shall be made to the members of the tribe in the manner set forth in section 243.5.

Section 243.12 *Sale of stock in the corporations.* In the event any stockholder of the corporation determines to sell or dispose of any stock owned by him in any of the corporations prior to August 27, 1964, he shall first offer it to the members of the tribe in accordance with the provisions set forth in the Articles of Incorporation and in the certificate of stock of such corporation and in the manner provided in §§ 243.5 through 243.10, as far as practicable.

APPENDIX F

PERTINENT PROVISIONS OF THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. §§ 78a, et seq.) AND REGULATIONS ADOPTED THEREUNDER

15 U.S.C. § 78j:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

• • •

To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 (17 C.F.R. 240.10b-5):

"It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

"(a) to employ any device, scheme, or artifice to defraud,

"(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

15 U.S.C. § 78cc:

Every contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of such contract, and (2) as regards the rights of any person who not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation . . .